

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for)	
Certification for)	Docket No.
Palmdale Hybrid Power)	08-AFC-8
Project)	
_____)	

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

MONDAY, FEBRUARY 14, 2011

10:13 A.M.

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HEARING OFFICER AND ADVISERS

Kenneth Celli, Hearing Officer

Paul Feist, Advisor

Tim Olson, Advisor

STAFF AND CONSULTANTS PRESENT

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Felicia Miller, Project Manager

Jennifer Jennings, Public Affairs

Lynn Sadler, Public Affairs

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CDFG

PUBLIC COMMENT

Nicole Parson, Recycle Development

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1 PROCEEDINGS

2 HEARING OFFICER CELLI: Welcome to the prehearing
3 conference for the Palmdale Hybrid Power Project.

4 Before we begin, I'll introduce the Committee and
5 ask parties to introduce themselves for the record.

6 I'm Commissioner Karen Douglas. I'll be the
7 Presiding Member on this case. And to my immediate right
8 is my Advisor, Paul Feist. To my immediate left, our
9 Hearing Officer Ken Celli. And then to my far left is Tim
10 Olson. He's advisor to Commissioner Boyd. Commissioner
11 Boyd will be the Associate member on this case.

12 And with that, let me introduce the Public
13 Advisor's Office in this room. We have Jennifer Jennings
14 and Lynn Sadler in this room from the Public Advisor's
15 Office.

16 And applicant, let me ask for you to introduce
17 yourself.

18 MR. CARROLL: Thank you. Mike Carroll with
19 Latham and Watkins on behalf of the applicant.

20 MR. BARNETT: Tom Barnett. I'm Executive Vice
21 President of the Inland Energy on behalf of the applicant.

22 MS. HEAD: Sara Head with AOCOM. We're the lead
23 environmental consultant for the applicant.

24 COMMITTEE MEMBER DOUGLAS: Thank you.

25 Staff?

1 STAFF COUNSEL DE CARLO: Good morning. Lisa
2 DeCarlo, Energy Commission Staff Counsel.

3 And to my right is Felicia Miller, Energy
4 Commission Project Manager.

5 COMMITTEE MEMBER DOUGLAS: Thank you.

6 And intervenors? Ms. Williams?

7 MS. WILLIAMS: Good morning. This is Jane
8 Williams with Desert Citizens Against Pollution. And Lisa
9 Belenky is on the phone.

10 MS. BELENKY: This is Lisa Belenky with the
11 Center for Biological Diversity. I'll try to stay on mute
12 most of the time so you won't hear my coughing.

13 COMMITTEE MEMBER DOUGLAS: Well, thank you. Feel
14 better.

15 Let me ask at this point if there are any elected
16 officials in this room or representatives of federal or
17 State government agencies?

18 HEARING OFFICER CELLI: Do you want me to unmute
19 the phone?

20 COMMITTEE MEMBER DOUGLAS: I'll just ask again.
21 Are there any elected officials or representatives of
22 government agencies on the phone?

23 MS. WILSON: This is Erinn Wilson with Fish and
24 Game.

25 COMMITTEE MEMBER DOUGLAS: Thank you.

1 MS. LILE: This is Laurie Lile with the City of
2 Palmdale.

3 COMMITTEE MEMBER DOUGLAS: So we have Fish and
4 Game, City of Palmdale.

5 Any other government agencies or elected
6 officials on the phone?

7 MR. DASSLER: Steve Dassler, City of Lancaster.

8 HEARING OFFICER CELLI: I didn't get that name.

9 MR. DASSLER: Steve Dassler, City of Lancaster.

10 COMMITTEE MEMBER DOUGLAS: Thank you.

11 Anybody else?

12 I'll turn this over at this point to Hearing
13 Officer Celli.

14 HEARING OFFICER CELLI: Thank you, Commissioner
15 Douglas.

16 Good morning, everyone. The Committee noticed
17 today's prehearing conference in a revised Notice of
18 Prehearing Conference and Evidentiary Hearings originally
19 issued on December 23rd, 2010. It was revised on January
20 18th, 2011. And a second revised Notice of Prehearing
21 Conference and Evidentiary Hearings was issued on January
22 31st, 2011.

23 As we explained in the notice, basic purposes of
24 the prehearing conference are to assess the parties's
25 readiness for hearings, to clarify areas of agreement or

1 dispute, to identify witnesses and exhibits, to determine
2 upon which areas the parties desire to cross-examine the
3 other party's witnesses, and to discuss associated
4 procedural matters.

5 To achieve these purposes, we require that any
6 party seeking to participate at this conference or
7 evidence or cross-examine witnesses at future evidentiary
8 hearings file a prehearing conference statement by
9 February 9th, 2011. Timely prehearing conference
10 statements were filed by the City of Palmdale, the
11 California Energy Commission staff, and the Center for
12 Biological Diversity. Intervenor Desert Citizens Against
13 Pollution, or DCAP -- for the record I'm going to be
14 referring to the Center for Biological Diversity as CBD
15 and the Citizens Against Pollution as DCAP.

16 Timely submitted exhibits and testimony were
17 received from DCAP but no prehearing statement. However,
18 subsequent communication from DCAP, an e-mail dated
19 February 10th, 2011, indicated they will not be calling
20 witnesses on direct examination apart from the Center for
21 Bio Diversity.

22 Staff filed its final staff assessment on
23 December 22nd, 2010. This serves as staff's testimony,
24 which has been marked for identification as Exhibit 300.
25 Staff also filed additional exhibits marked for

1 identification as 301 through 306. Timely testimony was
2 filed by the applicant, which includes the AFC testimony
3 and exhibits on January 12th, 2011, and has been marked
4 for identification as Exhibits 1 through 141. Intervenor
5 CBD's testimony was filed on January 19th, 2010, and
6 February 4th, 2011 -- sorry -- January 19th, 2011, and
7 February 4th, 2011, marked for identification as Exhibits
8 400 through 402.

9 Intervenor DCAP's testimony was filed on February
10 4th, 2011, and will be marked for identification as
11 Exhibits 500 through 502. Applicant and staff filed
12 rebuttal testimony which may not have been marked for
13 identification, but we will ask the parties to revise and
14 resubmit their exhibit lists as necessary.

15 I would just mention that there are exhibit lists
16 at the door this morning. I hope that you all get one, a
17 copy of a tentative exhibit list. I see nodding heads.

18 Ms. Williams, did you get one? Good. Thank you.

19 So I'm going to move on to -- I'm going to ask
20 that the parties burn a CD or DVD of their exhibits and
21 bring it to the evidentiary hearing so that before the
22 evidentiary hearing begins if you can give us that so
23 we'll have it there. And that way we don't have to haul
24 boxes of documents down, that would be greatly
25 appreciated. Please make a note of that.

1 Today's agenda is divided into five parts.
2 First, we will discuss matters contained in the prehearing
3 conference statements and other issues raised by the
4 parties. Next, we will discuss the witness list. After
5 that, we will discuss the exhibit list. And after that,
6 we will discuss a briefing schedule. And finally, we will
7 provide an opportunity for public comment.

8 I want to launch into the discussion of the
9 prehearing conference statements. According to staff and
10 applicant, all topics are ready to proceed. None are not
11 ready. I see nodding heads. According to CBD and I
12 assume DCAP as well, air quality, bio, land, alternatives,
13 oil and water and what was called cumulative analysis, but
14 later I think in CBD's document they explained that they
15 meant the cumulative analysis in bio, land, soil and water
16 alternatives are not ready. And I have Ms. Williams
17 nodding her head.

18 Is that correct, Ms. Belenky? Ms. Belenky, are
19 you on the phone?

20 MS. BELENKY: Yes. I'm sorry. To unmute takes
21 me a second. I think that's correct.

22 HEARING OFFICER CELLI: Thank you. But then the
23 topics that are considered to be in dispute -- and there
24 may have been changes since this morning -- I hope so.
25 There was a workshop. I see again we're nodding heads.

1 We'll see about that.

2 But as far as the prehearing conference
3 statements were concerned, applicant and staff both stated
4 that air quality, bio, hazardous materials, and traffic
5 were in dispute. And I do appreciate how articulately you
6 made it clear in your prehearing statements just how
7 limited those issues were. So I appreciate that.

8 As to CBD, the issues that are in dispute are
9 again air quality, biology, cultural resources, soil and
10 water, alternatives.

11 And then I had a question, Ms. Belenky, regarding
12 growth inducing impacts. I read your papers. I took that
13 to mean the growth inducing impacts of the newly paved
14 roads.

15 MS. BELENKY: I think that was accurate.

16 HEARING OFFICER CELLI: Because generally we
17 refer to growth inducing impacts in the socioeconomic
18 section. And I just want to be able to slot that concern
19 in the right topic area.

20 MS. BELENKY: Well, I don't know if there is time
21 to talk about it in substance, but there is an artificial
22 distinction sometimes between the topic areas and some of
23 them interrelate. So it can be a little bit awkward
24 sometimes.

25 COMMITTEE MEMBER DOUGLAS: Ms. Belenky, this is

1 Commissioner Douglas.

2 I guess my question is: Are you wanting to talk
3 about increased traffic or are you talking about increased
4 growth more broadly?

5 MS. BELENKY: Well, I have to say for the road
6 paving there was actually no analysis done of whether the
7 road paving could actually cause growth inducing impacts
8 in some of these areas or any of the other impacts of the
9 road paving. But so in specific, what we were looking at
10 there was the cumulative and growth inducing impacts of
11 paving roads in these areas.

12 HEARING OFFICER CELLI: That's great. So we'll
13 consider the growth inducing impacts of road paving only.

14 MS. WILLIAMS: Because is that -- because what
15 you guys in your rubric, it's providing more power; right?
16 Having more electricity? Is that a growth inducing
17 impact? Is that what you're trying to get clear on?

18 HEARING OFFICER CELLI: Actually, traditionally,
19 a growth inducing impact would be something that causes
20 hoards of people to move to this otherwise unoccupied area
21 and causing human growth impacts on the area, all of the
22 usual traffic impacts, air impacts, biological, et cetera.
23 So that is why it's typically in the socioeconomic
24 section, because they talk about workforce coming in and
25 population and things like that.

1 But I think if I understand your concern is
2 really about the growth inducing impact of having a paved
3 road.

4 MS. WILLIAMS: But I did also notice in the final
5 staff assessment that there was just a very brief mention
6 of growth inducing impacts from the added electronic
7 trickle generation of this facility and you relied upon an
8 autobahn lawsuit against the L.A. Department of Water and
9 Power on the pine tree to say that, well, it just doesn't
10 exist because we have this lawsuit that was against L.A.
11 DWP, which I thought was rather interesting. So I don't
12 know -- I kind of join Lisa then that there is like these
13 artificial silos sometimes, you know.

14 So are you saying that all growth inducing
15 impacts, whether they're from road paving or from
16 increases of electricity, then would be under 13,
17 socioeconomic resources?

18 HEARING OFFICER CELLI: I'm going to ask staff to
19 answer.

20 MS. WILLIAMS: We do get kind of artificial here.

21 HEARING OFFICER CELLI: Just so you understand,
22 when we use these topics, we really rely on the topic
23 areas as defined in the staff assessment under their
24 heading. So where does this fall in in the final staff
25 assessment?

1 STAFF COUNSEL DE CARLO: From staff's perspective
2 in terms of the growth inducing -- the potential for
3 growth inducing impacts as a result of paving roads, we
4 believe that would most likely best fall within the land
5 use analysis section.

6 HEARING OFFICER CELLI: Land use, okay. So I
7 guess we'll have to consider land use as a topic in
8 dispute. Okay. Good enough. Thank you for that
9 clarification.

10 Is that clear, Ms. Williams? I appreciate it is
11 pretty arbitrary, but we're trying to make sense of this.

12 STAFF COUNSEL DE CARLO: But, of course, land use
13 would not be prepared to discuss necessarily the growth
14 inducing impacts of adding a new energy facility in
15 California. So if the line of questioning is going to be
16 broader than the road paving, then we would obviously have
17 to think about another expert witness for that.

18 HEARING OFFICER CELLI: My thought -- I'm no
19 expert, but I was thinking maybe this fits in traffic and
20 transportation because we're talking about levels of
21 service.

22 STAFF COUNSEL DE CARLO: Ms. Williams has raised
23 in her comments a question about whether or not paving
24 roads does result in increased traffic and have we
25 analyzed the potential for increased traffic as a result

1 of the paved roads. So that definitely would fall under
2 traffic and transportation.

3 HEARING OFFICER CELLI: And traffic and
4 transportation is already a subject in dispute anyway.

5 STAFF COUNSEL DE CARLO: Although we'll need to
6 update you on what's transpired at this morning's
7 workshop.

8 HEARING OFFICER CELLI: I appreciate that. So
9 I'm going to add land use to my list of disputed topics.

10 As to the topics any party claims are incomplete
11 or in dispute, we expect the parties to work together. We
12 do appreciate and acknowledge there was a workshop this
13 morning. I'm eager to hear about that. So whether any of
14 these topics can be moved into the undisputed column, we
15 want to know about that.

16 The topics that are not in dispute are, according
17 to my notes anyway, are: One, facility design; two,
18 geology and paleontology -- I had land use in there. I'm
19 going to take that out. Noise, public health, power plant
20 efficiency, power plant reliability, project description,
21 socioeconomics, transmission system engineering, visual
22 resources, waste management, transmission line safety, and
23 nuisance and worker safety. So in that list, the only one
24 I need to take out of there as far as I heard so far is
25 land use.

1 Do you agree, applicant? I'm asking for topics
2 that are not in dispute that we could take in by
3 declaration.

4 MR. CARROLL: I agree that all of the topic --
5 from applicant's perspective that all of the topic areas
6 just listed are not in dispute. We believe there are
7 additional areas that are not in dispute from applicant's
8 perspective. But I agree with you that the list that you
9 just recited is amongst those areas that are not in
10 dispute.

11 HEARING OFFICER CELLI: Thank you.

12 And staff, do you agree?

13 STAFF COUNSEL DE CARLO: Yes.

14 HEARING OFFICER CELLI: And Ms. Belenky, do you
15 agree with that list?

16 MS. BELENKY: Yes.

17 HEARING OFFICER CELLI: Thank you.

18 And Ms. Williams, do you agree with that list as
19 not in dispute?

20 MS. WILLIAMS: Actually, no. From our workshop
21 this morning, we identified a couple of issues. One is
22 waste management and facility safety, which we talked
23 about the risk management prevention plans and the spill
24 prevention plans. I'm not sure where those would fall in
25 there, worker safety and fire protection or if that is --

1 HEARING OFFICER CELLI: Hazardous materials. It
2 would be I believe hazardous materials.

3 MS. WILLIAMS: That's not one of your
4 sub-categories though.

5 HEARING OFFICER CELLI: That's because I have
6 hazardous materials as being in dispute.

7 MS. WILLIAMS: Okay.

8 HEARING OFFICER CELLI: That wasn't in my not
9 disputed list. But waste management is in my not disputed
10 list. And waste management has not do with not so much
11 the spilling of the hazardous materials as much as what do
12 you do with it once it's on the ground. So hazardous
13 materials has to do with things like what landfill they're
14 going to haul it to and how are they going to deal with it
15 and that sort of thing.

16 MS. WILLIAMS: Okay. Great. So we have that
17 dispensed with.

18 HEARING OFFICER CELLI: When you say dispensed --

19 MS. WILLIAMS: As what you're saying as hazardous
20 materials.

21 HEARING OFFICER CELLI: So you're saying waste
22 management?

23 MS. WILLIAMS: Right.

24 HEARING OFFICER CELLI: Thank you. That's good.

25 MS. WILLIAMS: And actually the project

1 description, one of the things we spoke about in this
2 workshop this morning is that in the original project
3 description in all of the project description up until
4 this point, the road paving is not being included. And
5 that's important, because when I queried staff about
6 whether the road paving was included as the original
7 project description and then whether it was identified and
8 analyzed in the cumulative impacts assessment, I could not
9 get a yes answer. So that is rather important because you
10 basically have gone from having a plan that has a
11 footprint of a few hundred acres to now we're looking at
12 paving roads all over the Antelope Valley. It's a
13 different project with a much larger footprint. So there
14 is a number of issues that come up when that's the
15 mitigation measure for the PM.

16 And so -- and this is another sort of distinction
17 air quality is in, but public health is out. But the
18 reason we care about air quality is because its impact on
19 public health. So I'm not sure exactly, you know, the
20 issues on air quality are the ERCs and the ratios. And
21 the reason we care so much about the ratios is because we
22 care about public health and protecting the public health.
23 So I don't know that it's again of an arbitrary
24 distinction.

25 Probably most of the issues around public health

1 can be included in air quality. But we certainly had some
2 outstanding questions about how the health risk assessment
3 was done under the air quality piece. So I don't know
4 where those would fall, where that distinction gets made.

5 HEARING OFFICER CELLI: So two points that you
6 made. One is the project description should but does not
7 include the roads.

8 MS. WILLIAMS: Uh-huh.

9 HEARING OFFICER CELLI: Is that an accurate
10 statement?

11 MR. CARROLL: No, it is not, for the record. I
12 don't know if this is the point to be getting into
13 substantive discussion of the issues, but since we are,
14 for the record, applicant disagrees with that statement.
15 Road paving has been the proposed -- the intent offset
16 strategy for the project since the AFC was filed and is
17 clearly identified as part of the project from the onset.

18 HEARING OFFICER CELLI: In the project
19 description of the FSA? That's really what I'm --

20 MS. WILLIAMS: No, it's not -- I'm telling you, I
21 have the project description in front of me and the
22 workshop and it is not in here.

23 HEARING OFFICER CELLI: Let me ask staff about
24 that. I just want verification if that's the case.

25 STAFF COUNSEL DE CARLO: I do know for certain at

1 some point in response to requests for information the
2 applicant did provide a detailed explanation of what road
3 paving it intended to or anticipated to perform in order
4 to obtain emission reduction credits. I don't know as a
5 point of clarification -- staff does not present project
6 description as a subject to which we testify to. We
7 provide a description in the FSA in order to allow the
8 reader to understand the project that we're analyzing.

9 But we generally rely on the project description
10 as reflected in the AFC and as augmented throughout the
11 course of the proceeding. But we do not provide a witness
12 in that area. I believe that a line of questioning could
13 be in terms of individual staff what they analyzed with
14 regard to the project. But I don't believe that at least
15 with regard to staff that we would be presenting a witness
16 to testify to project description as a whole.

17 HEARING OFFICER CELLI: That's fine. I'm
18 thinking that the PMPD may include a discussion or
19 explanation of the roads. And in wading through all of
20 the documents that I've seen so far, I remember -- correct
21 me if I'm wrong -- but I thought I had seen a map of the
22 proposed roads to be paved.

23 STAFF COUNSEL DE CARLO: Staff did in their
24 rebuttal testimony provide a map of I believe eleven
25 identified road segments that the applicant was

1 contemplating paving a portion thereof. And I would
2 dispute the statement that staff did not analyze the road
3 paving regardless of whether or not it was included in our
4 project description, we did provide uncontested all
5 subsidies throughout the various technical areas.

6 HEARING OFFICER CELLI: Okay. I did receive
7 that. Wasn't that a supplemental -- what was that?

8 STAFF COUNSEL DE CARLO: That was rebuttal
9 testimony.

10 HEARING OFFICER CELLI: Okay.

11 MS. BELENKY: This is Lisa Belenky. I'm trying
12 to follow where we are in the conversation.

13 Staff did not provide that information in the
14 FSA. They provided it in the rebuttal.

15 And I agree with Jane that the project
16 description does not make it clear that the road paving
17 segment's a part of the project description. And we did
18 talk about this a little bit this morning, because to the
19 extent that the condition of certification are going to
20 apply to the road paving, we suggested that needs to be
21 made more clear that these are then part of the linears.
22 So we did -- the way the documents are written, it is
23 unclear.

24 HEARING OFFICER CELLI: I hear you. Ms. Belenky,
25 we hear you on that. Thank you very much.

1 I'm going to ask Ms. Williams. You had raised
2 the question of a project description. The only other
3 thing was the public health. Public health is -- maybe
4 I'll ask staff to draw the distinction of air quality and
5 public health. It's heavy stuff.

6 STAFF COUNSEL DE CARLO: Since Dr. Greenberg is
7 on the line, I'll defer to his description of where public
8 health deviates from air quality.

9 HEARING OFFICER CELLI: Wait. I unmuted him.
10 Let me put it on.

11 STAFF COUNSEL DE CARLO: I can give you a general
12 fact, and Dr. Greenberg can jump in if stated incorrectly
13 or if he feels more information is necessary.

14 My understanding is that air quality handles the
15 criteria pollutants, those designated under the Clean Air
16 Act and public health handles anything that isn't covered
17 was a criteria pollutant.

18 HEARING OFFICER CELLI: And that's as much
19 information as I think we need right now. So what you're
20 talking about are other toxic substances besides the
21 criteria health pollute ends under the CAA.

22 Does that clarify things for you, Ms. Williams?

23 MS. WILLIAMS: Right. So that's what I'm saying
24 is it as a very artificial distinction, because what we're
25 talking about is air pollution that are non-criteria

1 pollutants. So to me that's air quality because that's
2 stuff going in the air. But it is clearly something that
3 we discussed during the first workshop that we did not
4 come to a conclusion on.

5 So if that's the distinction, then must be health
6 needs to be in.

7 HEARING OFFICER CELLI: Okay. So I'm going to
8 add land use and open up public health just for purposes
9 of discussion today at the request of DCAP.

10 MS. WILLIAMS: Thank you so much.

11 HEARING OFFICER CELLI: And project description,
12 which is probably going to be dealt with in the PMPD out
13 of whatever comes out of the evidence essentially. So
14 that whatever we got in the form of rebuttal testimony and
15 other testimony would be fleshed out in the project
16 description of the PMPD. So when I'm talking about the
17 PMPD, Ms. Williams, I'm talking about the Presiding
18 Member's Proposed Decision, which is ultimately what we're
19 working towards here.

20 MS. WILLIAMS: I appreciate the clarification on
21 acronyms.

22 HEARING OFFICER CELLI: I'll try to be good about
23 that. We do get wrapped up in acronyms around here.

24 So I'm going to take land use, project
25 description, and public health out of that list for now

1 and ask the parties -- so I'm going to read this list and
2 ask the parties whether they stipulate to these areas of
3 testimony be submitted by declaration and that live
4 witnesses are not going to be needed to be present for
5 direct and cross-examination.

6 So let me read the list again so we're all on the
7 same page. Facility design, geology and paleontology,
8 noise, power plant efficiency, power plant reliability,
9 socioeconomics, transmission systems engineering, visual
10 resources, waste management, transmission line safety and
11 nuisance, and worker safety. I'm just going to go around
12 first with the applicant.

13 Do you agree that the undisputed areas that I
14 just listed off will be submitted by declaration and that
15 live witnesses need not be present and subject to direct
16 and cross-examination?

17 MR. CARROLL: Yes.

18 HEARING OFFICER CELLI: Staff, do you agree?

19 STAFF COUNSEL DE CARLO: Yes.

20 HEARING OFFICER CELLI: And Lisa Belenky, do you
21 agree?

22 MS. BELENKY: Yes.

23 HEARING OFFICER CELLI: Thank you.

24 And, Ms. Williams, do you agree?

25 MS. WILLIAMS: Yes, I agree.

1 HEARING OFFICER CELLI: Thank you very much.

2 That saves us a lot of time and makes for a more
3 efficient hearing.

4 MR. CARROLL: I'm sorry, Hearing Officer Celli.
5 What would be helpful for me would be if we could recap
6 the flip side of that coin. I'm not sure that I
7 understand exactly which areas are viewed by all of the
8 parties to be in dispute and subject to live testimony.

9 HEARING OFFICER CELLI: All parties agree that
10 air quality is in. All parties agree that bio is in
11 dispute. Applicant and staff just have a dispute
12 regarding hazardous materials. And applicant and staff
13 have a dispute regarding traffic. CBD and DCAP wanted to
14 add in cultural, soil and water, the growth inducing
15 impacts of the road paving we're calling land use now.
16 Alternatives and project description I'm just going to
17 call it as an disputed area. I don't think of it so much
18 as a disputed area. I think it will be subject to
19 evidence and will be clarified in the PMPD. And public
20 health would be the disputed areas.

21 I don't believe I omitted anything. But let me
22 know if I have.

23 STAFF COUNSEL DE CARLO: I'm sorry. Lisa
24 DeCarlo.

25 Cultural resources, was that identified by DCAP

1 their --

2 HEARING OFFICER CELLI: CBD -- DCAP's statement
3 was essentially that they are joining CBD. So basically
4 we're treating CBD's prehearing conference statement was
5 DCAP's joint prehearing statement as well.

6 STAFF COUNSEL DE CARLO: I'm just reading
7 sub-section E of CBD's testimony and they don't highlight
8 cultural resources. But --

9 HEARING OFFICER CELLI: They mentioned it. I
10 just was trying to be over inconclusive because in the
11 event that there is some dispute, we want to hear it and
12 find out what it is and hopefully the parties can resolve
13 it.

14 STAFF COUNSEL DE CARLO: It's just a matter of
15 having staff fly down to Palmdale. I just want to get an
16 understanding of the parameters of the cross-examination
17 is likely to be.

18 MS. BELENKY: I'm not sure we're supposed to talk
19 about it right now. If they were, I could talk about it.

20 HEARING OFFICER CELLI: I'm going to talk about
21 what witnesses will be necessary in a moment.

22 MS. BELENKY: Thank you.

23 HEARING OFFICER CELLI: You did mention cultural
24 resources in your prehearing conference statement.

25 MS. BELENKY: We did.

1 HEARING OFFICER CELLI: Is that something that
2 you were thinking of withdrawing, Ms. Belenky?

3 MS. BELENKY: Well, I mean, I think that I'm not
4 supposed to talk about it.

5 HEARING OFFICER CELLI: I'll read you the
6 section.

7 MS. BELENKY: I know what the section says. I
8 think that cultural resources which is similar to the
9 issue with several of these other areas as it relates to
10 the road paving part of the project is that there was no
11 information. And so it may not be useful to fly a bunch
12 of staff people down the Palmdale just so say they didn't
13 do any investigation of cultural resources. If that is
14 indeed the fact, which it appears to be. So I don't want
15 to require people to be cross-examined simply to say they
16 don't have any information.

17 HEARING OFFICER CELLI: That's a reasonable
18 position and I appreciate that.

19 I want to be clear and Ms. Belenky, that it seems
20 that bio -- well, not necessarily bio but cultural, soil
21 and water, this land use that was the growth inducing
22 impacts and alternatives all seem to stem from your
23 concern having to do with the roads themselves; is that
24 correct?

25 MS. BELENKY: I think that's right. That's

1 correct.

2 HEARING OFFICER CELLI: Really, what I'm trying
3 to do is put the parties on notice of who you're going to
4 need to be able to testify with regard -- really limited
5 to the road the questions as they relate to the road under
6 these topics.

7 STAFF COUNSEL DE CARLO: This is Lisa DeCarlo,
8 Energy Commission Staff Counsel.

9 That's been particularly helpful with regard to
10 soil and water because we did have different staff
11 reviewing the road paving versus the PSA section because
12 of paternity leave. Both witnesses are available now, but
13 it would be nice if we can limit it to road paving. Only
14 one witness would need to fly down to be available.

15 HEARING OFFICER CELLI: And that's the
16 inclination of the Committee, Ms. Belenky, that we limit
17 the witnesses just to the road paving issues. And in
18 fact, with regard to soil and water, I recall reading that
19 you said that one of the proposed roads to be paved cut
20 across a wetland or something like that. Do I have that
21 right?

22 MS. BELENKY: That was the contention of the
23 local conservancy who had actual knowledge on the ground.
24 And the applicant has since withdrawn its section from one
25 of the proposals. So the problem that I see is that staff

1 did not provide any really specific information. Where we
2 have information says we know there are problems. But I
3 don't know exactly how to handle this situation where
4 there simply was very, very little investigation on the
5 ground, if any. And yet, the Commission is prepared to
6 adopt the proposal.

7 HEARING OFFICER CELLI: So I think it's fair to
8 say that, for instance, in the context of cultural
9 resources, if staff has their cultural resources person
10 there, CBD and DCAP are going to claim that no cultural
11 analysis was done on these segments of road that will be
12 used for road paving emissions reductions credit. And
13 staff or applicant will probably have someone there to say
14 that they did or there was. But it's limited just to the
15 roads. And I hope that's helpful to the parties, that we
16 know that we're not going beyond just the roads with
17 regard to cultural.

18 Applicant?

19 MS. BELENKY: Well, I think that sounds correct,
20 except if there is such information it would be useful to
21 know it before the hearing and I don't see it in any of
22 the documentation. So I can't imagine that suddenly at
23 hearing staff are going to come up with new information.

24 HEARING OFFICER CELLI: Applicant, do you want to
25 respond?

1 MR. CARROLL: With respect to that particular
2 issue, applicant concurs that that is our understanding.
3 My comment was more of a general comment, which is that --
4 I know you're striving towards this. I just want to
5 emphasize from the applicant's perspective how important
6 it is from our perspective to have a clear understanding
7 of the topic areas and the issues that the intervenors
8 perceive to be in dispute so that the applicant and the
9 staff can have the appropriate witnesses available at the
10 evidentiary hearings. What we have tried to do through
11 the workshops and what we will try to do at the
12 evidentiary hearings is to try to have the appropriate
13 witnesses there to respond to the questions and the
14 concerns that the intervenors have.

15 However, it's extremely difficult to do that when
16 prehearing conference statements are not filed or
17 prehearing conference statements are ambiguous as to what
18 the particular issues are. What I'm concerned about,
19 because what we have seen in the workshops is that a
20 suggestion that the process is somehow overly constrained
21 or flawed and the intervenors have been provided an
22 opportunity to ask their questions or to get answers and
23 that therefore there's some defect associated with the
24 process because no one was on notice that particular issue
25 was subject of discussion or to be a subject of

1 discussion.

2 So all I'm asking is let's please get it out on
3 the table once and for all what the topic areas are and
4 the issues within those topic areas so we can all be
5 prepared to proceed at the evidentiary hearings.

6 HEARING OFFICER CELLI: I appreciate that. I'm
7 going to read from page 8 of CBD's prehearing conference
8 statements under the heading cultural resources and native
9 American values. "The staff admits that it had no data
10 and provided only preliminary information on the likely
11 impacts to cultural resources from the road paving
12 proposed as a mitigation measure. Therefore, this issue
13 as well cannot move forward."

14 And that is the section I was relying on to show
15 that -- but again, she is limiting it to the roads. So
16 this is only the -- the question is only having to do with
17 cultural impacts of the roads used for air quality -- for
18 emissions reductions; correct. So I hope that's helpful.
19 We would limit it to that. We won't go off on cultural
20 any more cultural areas because there's been no notice of
21 it. So I think that's clear. I think that CBD was clear,
22 not vague in their statements and DCAP I think that we
23 know exactly what they're talking about. So I do
24 appreciate that.

25 Now that I'm going to -- what I'd like to do

1 quickly because I'm getting the small stuff out of the way
2 before we get to the big thing, which is the witnesses and
3 the topic areas we're going to be dealing with.

4 MR. CARROLL: If I may, that was a useful
5 discussion to have in the context of cultural resources.
6 Perhaps it would be useful to talk about some of the other
7 topic areas. For soil and water, is that also the case of
8 the scope of the concerns are related to soil and water
9 are they limited to the roads? Can we get concurrence on
10 that?

11 HEARING OFFICER CELLI: That's the Committee
12 understanding; isn't that correct, Ms. Belenky, that it's
13 just the road paving soil and water?

14 MS. BELENKY: Just the issues that we identified
15 in our prehearing conference statement. As far as we're
16 concerned, there was extremely minimal identification of
17 any of the resources and certainly no actual analysis.
18 And so this is of great concern to us from an
19 environmental standpoint.

20 And like I said previously, I'm not sure how
21 useful it will be to have staff come all the way to
22 Palmdale to be cross-examined if they haven't done any of
23 the work, which to date they haven't or they've only done
24 a minimal amount. So I don't think our intent is to drag
25 people to Palmdale to cross-examine if they have nothing

1 more to say than what is in the document.

2 HEARING OFFICER CELLI: That's great. And the
3 Committee doesn't think that. So I want you to rest at
4 ease -- the Committee doesn't think you're dragging people
5 down for the sake of dragging people down. I just want
6 the clarification that what I just said was that my
7 understanding is that CBD and DCAP only want to address
8 soil and water as it relates to the paving of the roads;
9 is that correct? Is that a true statement?

10 MS. BELENKY: Those are the issues we raised,
11 yes.

12 HEARING OFFICER CELLI: Thank you.

13 And Ms. Williams is nodding her head. She said
14 yes. So for the purposes of the applicant and staff and
15 the witnesses you're going to bring, cultural, soil and
16 water, the growth inducing impacts of road paving, these
17 are all limited to the issue of road paving. And land use
18 also, the land use impact also was limited to the issue of
19 the road paving.

20 MR. CARROLL: Thank you for seeking that
21 clarification.

22 HEARING OFFICER CELLI: That hopefully saves us a
23 lot of time.

24 I wanted to move on to exhibit lists.

25 STAFF COUNSEL DE CARLO: Before we do, I would

1 like just a little bit of clarification. CBD identified
2 purpose and need as an subject area they wanted to
3 cross-examine us in, staff. We don't do a need analysis.
4 So I just want to make sure that we're not expected to
5 provide a witness to discuss this issue.

6 HEARING OFFICER CELLI: We're going to go off the
7 record for just one second.

8 (Off record.)

9 HEARING OFFICER CELLI: We're back on the record.

10 Regarding purpose and need, the joint prehearing
11 conference statement from the intervenors says, purpose
12 and need, the FSA failed to explain why the project is
13 needed, if at all, and in particular why a new gas fire
14 plant of over 500 megawatts is needed in light of the
15 recent approval of over 4,000 megawatts solar energy by
16 the Commission in the Mojave Desert region. The Committee
17 is going to make a ruling at this time that that is
18 irrelevant and inadmissible. And I'm going to tell you
19 why.

20 The question of need historically used to be
21 within the jurisdiction of the California Energy
22 Commission. In 1999, those provisions -- and I'm sorry I
23 don't have them right at my fingertips -- were repealed.
24 And that jurisdiction was taken away from the California
25 Energy Commission. So need is not relevant to our

1 proceedings and hasn't been since 1999. So that would be
2 deemed irrelevant by the Committee.

3 Is there any need for further discussion on that?
4 I see shaking heads of no.

5 MS. WILLIAMS: Well, I think there's two pieces
6 of that. There's the need and there's the alternatives
7 analysis. So are you going to talk about that as well
8 or --

9 HEARING OFFICER CELLI: Why don't you explain
10 what you mean?

11 MS. WILLIAMS: So let's just say that the
12 Commission is going to take its position that you know,
13 you will either license a plant or not license a plant,
14 but need cannot be part of the criteria. But because you
15 have a CEQA equivalent process, then you have to have an
16 alternatives analysis. So let's say you're not going to
17 make a demonstration that however many megawatts is
18 needed. But what about the alternatives? What kind of
19 alternatives are there to making energy that are
20 alternative to the plant? So I think that's the other
21 issue as you recall alternatives was kept in our list of
22 things that are still at issue.

23 HEARING OFFICER CELLI: Lisa Belenky, did you
24 wish to speak to the question of purpose and need?

25 MS. BELENKY: Well, I think Jane certainly

1 flagged one of the most important things is that purpose
2 and need of the project actually does control how the
3 alternatives are viewed. And the FSA does discuss need,
4 but I understand that in saying the Commission has no
5 decision making authority regarding need. But what is the
6 purpose of the project if it's not to supply energy and
7 how is the Commission able to view alternatives if it has
8 no -- it does say there is a need. So you're saying
9 you're just accepting the need. I'm just confused.
10 You're assessing the need from Palmdale without any
11 question and therefore you're just --

12 HEARING OFFICER CELLI: Actually, if I may tell
13 you, we're not accepting the need at all. It's not even a
14 question that comes before the Energy Commission whether
15 there's a need or not, because the determination in 1999
16 was that the whole question of need would be decided by
17 market forces and not by an analysis of need in the
18 market.

19 And so basically power plant -- people who want
20 to build power plants run the risk of their power plant
21 being profitable or not. And that would be -- that's what
22 determines need. There's also the Public Utilities
23 Commission which has authority over need. And they do an
24 investigation into that. But I'm going to turn it over to
25 applicant. Did you wish to speak to this?

1 MR. CARROLL: I concur with that statement. I
2 mean, I think we're really talking about two distinct
3 issues here. One is whether or not the Energy Commission
4 continues to undertake a needs analysis for the project.
5 I agree with the summary of the current state of the law
6 provided by you, Mr. Celli, with respect to that issue.
7 Obviously, that doesn't eliminate the need for the Energy
8 Commission to review alternatives to the project pursuant
9 to CEQA, which has been done. And so I'm not sure with
10 the intervenors are expressing concerns about the
11 alternatives analysis what the specific concerns are. But
12 there certainly was an alternatives analysis included in
13 the AFC and included in the staff assessment. So the
14 alternatives analysis has been done, regardless of whether
15 or not the Energy Commission is under an obligation to
16 make a needs determination.

17 HEARING OFFICER CELLI: Staff, did you have a
18 comment?

19 STAFF COUNSEL DE CARLO: I agree with Mr.
20 Carroll's statement.

21 HEARING OFFICER CELLI: So if I could, I would
22 say that consensus seems to be that while we don't tackle
23 needs, needs is addressed in alternatives, a need for the
24 project is mentioned in the alternatives such that the
25 intervenors should be able to respond to need as raised in

1 alternatives to just within that limited area.

2 STAFF COUNSEL DE CARLO: I would clarify that
3 slightly. We don't know into whether the project is
4 needed for the state of California to meet any electricity
5 goals or anything. In alternatives, we analyze
6 alternatives that could meet the goals, establish the
7 objectives established by the applicant, which is
8 reasonable. We don't always take every single objective
9 that they've identified. But enough to reasonably provide
10 an alternative that could serve the purpose for the
11 project that they proposed. But I wouldn't go so far as
12 to say that that is an analysis of the need for the
13 project.

14 HEARING OFFICER CELLI: Right. Because you lack
15 jurisdiction over that.

16 STAFF COUNSEL DE CARLO: Exactly. It was taken
17 out of our hands.

18 HEARING OFFICER CELLI: So, Ms. Belenky, did you
19 wish to speak to this just if we can clear up this
20 misunderstanding? Because you understand that the PUC has
21 jurisdiction over need.

22 MS. WILLIAMS: Actually, can I respond? This is
23 Jane.

24 It's interesting, because in your alternatives
25 analysis, you actually include elements that you -- staff

1 included. And that is describe the basic objective of the
2 project identify potentially significant impacts.
3 Identify and evaluate alternatives sites, identify and
4 identify alternative routs for the transmission line,
5 identify and evaluate technology alternatives to the
6 project that could mitigate and evaluate the no-project
7 alternative. Actually, when you evaluate the no-project
8 alternative, you're sort of back dooring the needs
9 analysis because if the project isn't built, what would
10 happen.

11 It was very interesting, I actually took a look
12 at the PUC's determination in the Oakley Power Plant, and
13 they actually used your 2009 IEPR to say that we really
14 didn't need the plant.

15 So we're going around and around this. And
16 Ms. Douglas, I know you know we're trying to sort out
17 what's on first and who's doing what to do. We have the
18 long term planning process and -- but at the same time, we
19 have investors investing in plants that will never be
20 built and we're sending the wrong signal to the market. I
21 don't know how much we want to get into it here. But it's
22 very clear the Antelope Valley is the Saudi Arabia of wind
23 and the Saudi Arabia of solar, and it is kind of strange
24 to be building a gas-fired power plant in the middle of
25 it, especially when we look at the capacity of the plant

1 to congest the line and that SCE just spent a small
2 fortune bringing in a new transmission line and upgrading
3 the Vincent Hill substation. So I think that these are
4 all things that at least it could be interesting for the
5 Commission to hear.

6 HEARING OFFICER CELLI: I'm not sure what we're
7 talking about, quite frankly. If the intervenors want to
8 come in and argue there is not a need for this project,
9 that is certainly something they are entitled to do. That
10 is not the same as stating that the Commission needs to
11 make a specific finding related to need. But certainly
12 the intervenors are free to make whatever arguments they
13 want to make with respect to their views on whether or not
14 this project is needed.

15 HEARING OFFICER CELLI: And that clarifies a
16 question I had, which was the alternatives in my list of
17 disputed topics. This is what we are talking about for
18 CBD and DCAP as the alternatives. That's the matter in
19 dispute.

20 MS. BELENKY: No.

21 HEARING OFFICER CELLI: Go ahead.

22 MS. BELENKY: Well, first of all, I think we
23 should get into what we're talking about. But the
24 alternatives also relates to the road paving. So it isn't
25 that it's just about this. I mean, I have to say and I

1 know that many of you have been part of this that in all
2 of the work that we've been doing on solar power plants,
3 you know, the Commission has very much stressed the need
4 for renewable energy. And so it's interesting to hear
5 that now the Commission thinks it has actually no
6 jurisdiction over the question of need. So I'm going to
7 go back and re-think how that fits in there. But I think
8 there is a real question here as to why the
9 alternatives -- why this is even being considered at this
10 point when the Commission has just adopted a huge amount
11 of solar power in this area that is also taken power. And
12 if you're saying you don't have any jurisdiction, that's
13 fine. I can drop it from this list. But I do think there
14 is a very, very important policy question.

15 HEARING OFFICER CELLI: What we're going to do
16 then, Ms. Belenky, Ms. Williams, and other parties is
17 we're going to allow the limited use of any evidence you
18 want to put in regarding need. I guess we'll hear about
19 it in your briefs when we get to that about how need
20 relates to alternatives, relates to the analysis. So with
21 that, I'm going to move on then to exhibit lists. There
22 is -- Mr. Carroll, you were motioning?

23 MR. CARROLL: I'm sorry. A suggestion, before we
24 move from topics to exhibits, perhaps it makes sense to
25 talk about what's transpired in the workshop that was held

1 because I think some of the areas in dispute are only in
2 dispute vis-a-vis the staff and the applicant. And I
3 think we've made some progress in our workshops and may be
4 able to take some of those off the list.

5 HEARING OFFICER CELLI: That's great. Let's hear
6 it.

7 MR. CARROLL: We have had several formal
8 exchanges since the FSA was released, including the
9 applicant's comments on the FSA and then most recently the
10 prehearing conference statement. As of the filing of the
11 prehearing conference statement, we did have outstanding
12 issues in the area of air quality, biology, hazardous
13 materials, and traffic and transportation. We conducted a
14 workshop over the course of two days, the second day being
15 this morning as part of the prehearing conference. As a
16 result of either concessions made on the part of the
17 applicant or concessions made on the part of the staff or
18 compromises made into language in the proposed conditions,
19 we have reached resolution in a number of areas.

20 With respect to the outstanding hazardous
21 materials issues there were two plants that staff was
22 asking the applicant to prepare. This relates to Haz 2.
23 The process and safety management plan, the spill
24 prevention control and counter measure plan. Applicant
25 believed and continues to believe those plans are not

1 required for the project. But in the interest of moving
2 the project forward, we are agreeing to prepare those
3 plans. So we believe that between the applicant and the
4 staff, hazardous materials is no longer in dispute.

5 HEARING OFFICER CELLI: Is that the only
6 condition in hazardous materials in dispute?

7 MR. CARROLL: Haz 2 was the only question and
8 both of those plans were required by that condition.

9 With respect to traffic and transportation, the
10 only issue that was outstanding as of the filing of the
11 prehearing conference statement related to Trans 1. This
12 has to do with the specific route the construction workers
13 must follow to the site and the hours during which they
14 can be on that route. I believe that we have reached an
15 agreement an accommodation with the staff on some revised
16 language for Trans 1. I think we have agreement and
17 concept. CEC staff is working on the specifics of the
18 language we're going to try to revisit immediately
19 following the prehearing conference to make sure we have
20 all the words in place, but I believe the Trans 1 has also
21 been resolved and taken off the table as between the staff
22 and the applicant.

23 HEARING OFFICER CELLI: Were there other
24 conditions or was that the only one?

25 MR. CARROLL: That was the only one.

1 HEARING OFFICER CELLI: And that was the only
2 matter in dispute?

3 MR. CARROLL: That was the only issue in dispute
4 under traffic and transportation.

5 HEARING OFFICER CELLI: Thank you.

6 So hazardous and traffic and transportation now
7 are no longer in dispute as between applicant and the
8 staff?

9 MR. CARROLL: Correct.

10 HEARING OFFICER CELLI: Thank you.

11 MR. CARROLL: The third area that was in dispute
12 as between applicant and staff as of the filing of the
13 prehearing conference statement was biology. And I
14 believe that we have reached resolution of all of the
15 three outstanding issues there with one of them related to
16 the quantity of soil to be stockpiled for revegetation.

17 Again, we believe that we have a meeting of the
18 minds. CEC staff is working on some minor alterations to
19 the proposed condition which we expect to be acceptable,
20 and therefore we believe that issue has been taken off the
21 table.

22 With respect to the payment of the Raven
23 Management Program, this is another one where we will
24 continue to disagree with the staff over whether this is
25 required but will pay the full amount of the fee which is

1 requested by staff, which takes that off the table.

2 And then with respect to the plant communities
3 that must be in the Swainson's Hawk foraging habitat, we
4 have also reached agreement with some relatively -- some
5 concessions on the part of the applicant and with some
6 minor adjustments to the language that the CEC staff and
7 CDFG staff agreed was acceptable this morning in the
8 workshop. That issue has been taken off the table. So
9 again as between the applicant and the staff we believe
10 subject to confirming the words on the page that all of
11 the biology issues have been put to rest.

12 HEARING OFFICER CELLI: Weren't there issues
13 having to do translocation of the desert tortoise?

14 MR. CARROLL: Those were previously resolved.

15 HEARING OFFICER CELLI: Let me see what else I
16 had in bio. The closure of the plant, I guess that wasn't
17 in the file.

18 MR. CARROLL: You may be referring to -- there
19 were some issues that was of the filing of our comments on
20 FSA there was a broader list of issues. Many of those
21 were resolved in the initial workshop. All that was left
22 on the table for today were the issues identified in the
23 prehearing conference statement. And it was those three
24 issues of bio and those were resolved today.

25 HEARING OFFICER CELLI: Thank you.

1 MR. CARROLL: That leaves the only issue in
2 dispute as between the applicant and the staff to be the
3 appropriate offset ratio to be used for the inter-district
4 transfer of VOC and NOx ozone precursors from the San
5 Joaquin Valley in the Antelope Valley. This has been an
6 issue that we have debated with the staff throughout these
7 proceedings. We continue to believe that under the
8 appropriate regulations and laws and as a matter of
9 appropriate environmental protection that 1.3 to 1 offset
10 ratio is appropriate.

11 But as you all know, this project has been
12 languishing for some time. This is one of the projects
13 that while it has a solar component was not an ARRA funded
14 project and it got caught up in the tremendous crush of
15 our projects that were coming through the Energy
16 Commission. So it's been a long time coming getting to
17 this point.

18 And I should have said at the outset we
19 appreciate we're here. Over the course of that process,
20 we lost our Committee. We appreciate that we have two new
21 Committee members who have stepped into something and
22 agreed to come up to speed and move it forward.

23 So because of that long history in the interest
24 of getting this forward and getting this important project
25 for the city of Palmdale, we are now -- had some

1 discussions since the workshop this morning -- prepared to
2 concede on the offset ratio. And we will agree to the 1.5
3 to 1 offset ratio on the ozone precursors.

4 So with that, that eliminates every outstanding
5 issue and every topic area between the applicant and the
6 staff.

7 HEARING OFFICER CELLI: Thank you. That saves us
8 a lot of time.

9 Now in your workshop, let me ask you this,
10 because CBD raised issues with regards to ratios and air
11 quality. Were they on board with this, these resolutions?

12 MR. CARROLL: I think you should ask them.

13 HEARING OFFICER CELLI: Okay. Ms. Belenky, you
14 just heard that some of the issues were resolved. Let me
15 try it with the easier ones first perhaps. Did the
16 resolution between applicant and staff resolve your
17 questions regarding hazardous materials?

18 MS. BELENKY: I'm not sure I -- (inaudible)

19 HEARING OFFICER CELLI: You're right. I'm sorry.
20 I didn't read my chart. You're not involved in that. You
21 don't have hazardous materials or traffic.

22 MS. BELENKY: But Jane has issues with those.

23 HEARING OFFICER CELLI: Yeah, but I really just
24 want to -- the only overlap we have here is air quality
25 then, and bio. So did the -- the resolution between staff

1 and applicant as it related to the problem -- the disputes
2 in biology, is there anything that CBD takes off the table
3 because of their resolution of those issues?

4 MS. BELENKY: I don't think so actually, because
5 those were about the -- if I understood correctly, there
6 were two different things. But one of them was about the
7 mitigation acres for the Joshua Tree. That's not
8 something that we had raised.

9 HEARING OFFICER CELLI: Okay. So --

10 MS. BELENKY: We're somewhat concerned about the
11 language they're proposing but --

12 HEARING OFFICER CELLI: Okay. So CBD, you're not
13 joining or DCAP any of the resolution that was achieved
14 today in the workshop?

15 MS. BELENKY: They were on issues that were
16 different issues.

17 HEARING OFFICER CELLI: Okay. Very good. Clear.
18 Thank you for that clarification.

19 MR. CARROLL: So am I clear then that hazardous
20 materials and traffic will be taken off the list of
21 disputed areas since it was only as between applicant and
22 staff disputes existed?

23 HEARING OFFICER CELLI: Yes.

24 MS. WILLIAMS: I'd like to actually discuss
25 something. The dispute it was whether a spill prevention

1 plan and a process safety management plan were required.
2 And we actually agreed with staff those plans were
3 required. And so the applicant said they will do those
4 plans. But those plans have a public review, which
5 actually the staff says that they will not create the
6 provision for the ability of the public to review the
7 plans. And so that's the issue. The issue is not that
8 the plans will be done or not done. It's the question of
9 will local responders get a chance to review the process
10 safety management plans or the spill prevention plans and
11 will people living around the facility that would be
12 affected by the plans or the lack of thoroughness of the
13 plans.

14 HEARING OFFICER CELLI: I think that's something
15 that you will be free to brief.

16 MS. WILLIAMS: Okay.

17 HEARING OFFICER CELLI: We're not going to take
18 evidence on it, but you can brief those issues when we get
19 to briefing.

20 MS. WILLIAMS: I just wanted to clarify why --
21 right

22 HEARING OFFICER CELLI: Very clear.

23 MS. WILLIAMS: If the plans were not going to be
24 done, then the staff would have brought up they wanted the
25 plans done. But they said they would do the plans. But

1 now it's not clear that the public gets public review of
2 the plans. So thank you.

3 HEARING OFFICER CELLI: Got it. That's a legal
4 issue you will raise again, I'm sure. With that --

5 STAFF COUNSEL DE CARLO: So could I get
6 clarification we don't need our hazardous materials expert
7 at the hearing?

8 HEARING OFFICER CELLI: That's right. Or your
9 traffic expert it looks like.

10 STAFF COUNSEL DE CARLO: Well, I recall one of
11 the parties did raise the question of whether the road
12 paving itself induces traffic.

13 HEARING OFFICER CELLI: Right. So maybe we need
14 them for that. I think that just common sense if you can
15 sort of look and see how the road paving effects certain
16 topics, you may want to have certain people here just to
17 deal with the road paving issues.

18 STAFF COUNSEL DE CARLO: And if I could get a
19 little bit more clarification on traffic and
20 transportation issue, Ms. Williams, in her comments, I
21 believe submitted some -- actually it was an exhibit on --
22 couple of exhibits --

23 HEARING OFFICER CELLI: Aviation.

24 STAFF COUNSEL DE CARLO: Exactly. I would just
25 like some clarification on whether our aviation analysis

1 is going to be subjected to cross-examination as well
2 as --

3 HEARING OFFICER CELLI: Well, there was no
4 request for that. There was no request for aviation in
5 any of the prehearing conference statements. Therefore,
6 we were not inclined to go there.

7 STAFF COUNSEL DE CARLO: Okay.

8 HEARING OFFICER CELLI: Doesn't necessarily mean
9 that the evidence comes in or not. We'll cross that
10 bridge at the evidentiary hearing. We marked it for
11 identification. We'll cross that bridge at the
12 evidentiary hearing. But I am not -- I do not expect to
13 call any witnesses or hear any testimony having to do with
14 aviation at the evidentiary hearing.

15 STAFF COUNSEL DE CARLO: Okay.

16 HEARING OFFICER CELLI: So I wanted that to be
17 clear.

18 Ms. Williams, clear on that?

19 MS. WILLIAMS: Uh-huh.

20 HEARING OFFICER CELLI: Thank you.

21 Any comment before I move on from CBD?

22 MS. BELENKY: No.

23 HEARING OFFICER CELLI: Thank you.

24 With that, I want to talk about the exhibit
25 lists. On Thursday, February 10th, 2011, a tentative

1 exhibit list was circulated among the parties via e-mail.

2 I also provided copies here today.

3 Ms. Belenky, can you get a copy of the tentative
4 exhibit list?

5 MS. BELENKY: Yes.

6 HEARING OFFICER CELLI: Oh, good. Are there any
7 corrections that need to be made first from applicant on
8 the exhibit list? One moment. We're going to go off the
9 record for a second.

10 (Off record.)

11 HEARING OFFICER CELLI: We're back on the record.

12 So applicant, we're asking if there are any
13 changes to the tentative exhibit list?

14 MR. CARROLL: Yes, there are three additional
15 exhibits that were identified in the prehearing conference
16 statement that don't appear on the version of the exhibit
17 list that was distributed today.

18 HEARING OFFICER CELLI: Now, our exhibit list
19 ends on 141. It says 115, but I know that the -- am I
20 confusing you with another case?

21 MR. CARROLL: No. I was just struggling with the
22 same thing. There must be -- there's something --

23 HEARING OFFICER CELLI: I received the hard
24 copies of the exhibits from Latham Watkins, and it was
25 141 -- it went up to 141.

1 MR. CARROLL: It appears that the explanation
2 between 141 and 115 is that the applicant had broken out
3 the AFC sections as separate exhibits since they're
4 sponsored by different witnesses. Whereas, it appears
5 that in the Committee's proposed exhibit list the AFC is
6 identified as a single exhibit.

7 HEARING OFFICER CELLI: Oh, I see. They
8 re-numbered.

9 MR. CARROLL: I would suggest that we use the
10 applicant's number because all of the exhibits have
11 already been submitted.

12 HEARING OFFICER CELLI: I'm sorry about that. I
13 didn't have a chance to cross reference. Yes, we would
14 use the applicant's numbers. My apologies to the other
15 parties. But this is why we send out a tentative exhibit
16 list, so you can look and tell us what we went wrong. And
17 this is something that went wrong. I would want for
18 clarification's seek to use the applicant's numbers as
19 provided.

20 Now, I know the applicant sent all of the parties
21 their proposed exhibit list. It was -- it had blue
22 tables. I see that applicant is nodding -- staff is
23 nodding their head in recognition.

24 Did you receive that, Ms. Williams? Okay.
25 Ms. Williams received it. Did you receive the applicant's

1 proposed list, Ms. Belenky?

2 MS. BELENKY: I think so, yes.

3 HEARING OFFICER CELLI: You need a cup of tee
4 with some honey in it.

5 Sorry. I'm going to try to make you talk as
6 little as possible.

7 MS. BELENKY: I think I did get it.

8 HEARING OFFICER CELLI: So we're going to rely on
9 the list the applicant provided, because those are the
10 numbers we're going to be using. And then you needed to
11 change --

12 MR. CARROLL: So with that, then the only
13 additions to the list that were previously provided are
14 identified on page 6 of our prehearing conference
15 statement. Those are Exhibits 143, 144 and 145.

16 HEARING OFFICER CELLI: The reason I was asking
17 about that is because there's no Exhibit 142.

18 MR. CARROLL: That's what we were trying to
19 figure out ourselves here. Hold on just a moment.

20 HEARING OFFICER CELLI: Okay.

21 MR. CARROLL: On applicant's exhibit list,
22 exhibit 142 is rebuttal testimony of Laurie Lile regarding
23 alternatives disconnects on January 19th, 2011, a
24 five-page document.

25 HEARING OFFICER CELLI: I have the document. I

1 just didn't know that was Exhibit 142.

2 MR. CARROLL: So that would be 142. And then
3 143, 144 and 145 are identified in the prehearing
4 conference statement. And I will say to make this perhaps
5 more simple, we included an updated exhibit list with our
6 prehearing conference statement that's Attachment C. And
7 it includes all of the exhibits, including those three
8 that I just mentioned.

9 HEARING OFFICER CELLI: And I apologize. I
10 printed off your prehearing statement without attachments
11 because I figured I have that.

12 MR. CARROLL: So Attachment C is the most recent
13 applicant's exhibit list that includes everything. And I
14 believe we also provided that to Mr. Celli in electronic
15 format.

16 HEARING OFFICER CELLI: Thank you. I'll have
17 that updated as soon as possible. And we'll get a new
18 exhibit list out to the parties.

19 For staff, I have Exhibits 300 through 306. Is
20 that the sum total of your exhibits?

21 STAFF COUNSEL DE CARLO: That is, although we do
22 anticipate entering a joint stipulation with the applicant
23 for those conditions that we agreed to changes based on
24 today's workshop. So that will be probably the final
25 exhibit for staff.

1 HEARING OFFICER CELLI: That's great. As long as
2 I just brought something up that reminds me. In the past,
3 I've when I've had multiple iterations of conditions,
4 sometimes the wrong iteration makes its way into the PMPD.
5 So we want to make sure that if we can get -- it would be
6 nice if we can get something with all of the most current
7 conditions on them and the parties agree on so that we can
8 use those the file the PMPT. I'd appreciate that.

9 STAFF COUNSEL DE CARLO: Would you like that
10 after the hearing?

11 HEARING OFFICER CELLI: Certainly. After the
12 hearing as some sort of a joint statement or joint agreed
13 upon, you know, revised conditions or something like that.

14 Next, I'm turning to the Center on Biological
15 Diversity has Exhibits 400 through 402. Is that all that
16 you have, Ms. Belenky?

17 MS. BELENKY: Yes, that's all we have so far.

18 HEARING OFFICER CELLI: Thank you. And then from
19 the Desert Citizens Against Pollution, I have Exhibit 500,
20 501, 502. Were there any other exhibits, Ms. Williams?

21 MS. WILLIAMS: The CBD 402, it just says
22 additional testimony.

23 HEARING OFFICER CELLI: I don't see where you're
24 looking.

25 MS. WILLIAMS: I'm looking on 402. Not to jump

1 in for Lisa, but CBD filed expert testimony --

2 HEARING OFFICER CELLI: Right. Mr. Tholen, isn't
3 it?

4 MS. WILLIAMS: Yes. I don't see that in here.

5 MS. BELENKY: That's (inaudible) testimony.

6 HEARING OFFICER CELLI: It's Mr. Tholen's
7 testimony.

8 MS. BELENKY: Yeah. I believe that's what it is,
9 yeah.

10 HEARING OFFICER CELLI: Okay.

11 MS. WILLIAMS: That's what 402 is?

12 HEARING OFFICER CELLI: Yes.

13 MS. WILLIAMS: That's fine. But the one thing I
14 do not see is the United States Environmental Protection
15 Agency had commented on the final determination of
16 compliance.

17 HEARING OFFICER CELLI: Is that an exhibit that
18 you had proffered?

19 MS. WILLIAMS: No, but it was -- it's not one I
20 proffered. But it was in the record at one point. I
21 don't see it in here now.

22 HEARING OFFICER CELLI: Staff, is that a comment
23 that you're familiar with or aware of? I see a nodding
24 head.

25 STAFF COUNSEL DE CARLO: Yeah, we don't usually

1 for purposes of hearings to identify the FSA as an exhibit
2 and then any additional exhibits we believe will be
3 necessary in terms of reinforcing areas that have been
4 subject to dispute. We didn't believe that that document
5 was critical to any line of questioning that we were going
6 to enter into. So we didn't identify that as an exhibit.

7 HEARING OFFICER CELLI: I understand that. I
8 took it to mean that Ms. Williams was saying this was a
9 comment. And if it's a comment, a comment usually finds
10 its way if not in the FSA then we're going to have to deal
11 with it in the PMPD if it's a comment as a comment. And I
12 was hoping that you would be able to tell me whether the
13 comment was responded to in the FSA.

14 STAFF COUNSEL DE CARLO: I'm told we did receive
15 it in time for response to be included in the final staff
16 assessment.

17 HEARING OFFICER CELLI: Oh, good. Okay. So
18 Ms. William, that was a comment that was ostensibly
19 included in the FSA.

20 MS. WILLIAMS: So where would it be in the docket
21 then?

22 HEARING OFFICER CELLI: If it's in the docket --
23 you know, when you go on our website, we have a docket
24 list. And I'm happy to say we have a newly corrected
25 docket list, because there were some errors in that, and I

1 brought it to attention of Dockets and they've corrected
2 it. But those comments should be in the Dockets list.

3 Now, there is a distinction between comments and
4 evidence. But typically, what happens is when comments
5 come in on the FSA, then in the -- or usually after the
6 PSA. When I say PSA and FSA, what I'm talking about is
7 preliminary staff assessment and final staff assessment,
8 PSA and FSA. The comment would be included in the FSA,
9 and the reason this is important to me is because when we
10 write the PMPD, we have to address and consider comments.
11 So I'm always interested in what comments are in the FSA
12 and what aren't so I know what we need to deal with in the
13 PMPD.

14 STAFF COUNSEL DE CARLO: And actually to clarify,
15 I'm looking at our FSA right now, we do not identify
16 comments received. The comments were based on the FDOC
17 and not on staff's analysis in particular. So that may
18 have been why we don't specifically address it or it may
19 be that, in fact, it did come in after our FSA. I will
20 concur with staff. I'm assured they have read the letter.
21 But we'll be prepared to respond to any line of
22 questioning on EPA's comments at the evidentiary hearing.
23 And if Ms. Williams wants to identify that as an exhibit
24 of her own to enter --

25 HEARING OFFICER CELLI: Well, at this late date,

1 I don't know if they can do that. But what I would say is
2 this, Ms. Williams. You can -- if you have that document,
3 you could submit it or have the proponent of that document
4 submit it as comment.

5 MS. WILLIAMS: I was going to say I wonder,
6 because you have the FDOC in here.

7 HEARING OFFICER CELLI: As an exhibit.

8 MS. WILLIAMS: Final. Would it be in all the
9 comments on the FDOC be part of the document that you have
10 in the docket?

11 STAFF COUNSEL DE CARLO: No. We traditionally
12 enter the FDOC as an exhibit. That's standard practice.
13 But no comments upon the FDOC unless --

14 HEARING OFFICER CELLI: Unless the comments are
15 included in the FDOC; right?

16 STAFF COUNSEL DE CARLO: It's my understanding
17 these are comments on the FDOC.

18 HEARING OFFICER CELLI: Oh, I see. You can
19 submit those as comment.

20 MS. WILLIAMS: Right. What about the testimony
21 during the public hearing for the FDOC?

22 HEARING OFFICER CELLI: You know, you can submit
23 anything you want really as comment, but at this point,
24 since we didn't get a prehearing conference statement that
25 listed any evidence, it's a little late in the game now to

1 start adding more exhibits that we weren't aware of.
2 That's why I'm suggesting to you if it's really important,
3 it should be in the record as comment.

4 MS. BELENKY: I am sorry. I think I would like a
5 little bit of clarification perhaps from the Committee on
6 this. I think we talked this issue over again before
7 where (inaudible) submitted a comment either on the FSA or
8 the FDOC are later not considered part of the record in
9 the CEC process which I do understand that you consider
10 exhibits to be somehow different from the rest of the
11 record. But there has to be a large (inaudible) that
12 includes all of the public comment on the document itself,
13 the FSA as well as the PMPD as well as the FDOC because
14 these are the public comments that are provided for under
15 the law. And they are part of the record. I understand
16 that the Commission may treat them somehow quite
17 differently. But to say that they're not part of the
18 record is probably not entirely accurate.

19 HEARING OFFICER CELLI: Well, that's true. As
20 you know, Ms. Belenky, you worked on the Genesis case and
21 you might recall in the PMPD there was always a section
22 called public comment. And in that, I would bold -- put
23 names of people who commented in bold and address their
24 comments. Do you remember what I'm referring to?

25 MS. BELENKY: Well, I know what you're referring

1 to, but I'm talking about the record.

2 HEARING OFFICER CELLI: But they weren't part of
3 the -- they're part of the record insofar as the comments
4 were received and addressed and considered. But the PMPD
5 has to be based on substantial evidence and the evidence
6 is the evidence that's brought into the record during the
7 evidentiary hearing. So comment is distinct from evidence
8 in that regard.

9 STAFF COUNSEL DE CARLO: The confusion might be
10 as a result of there are several different records in the
11 Energy Commission proceeding. There is the evidentiary
12 record, but there's also a larger record that includes
13 public comments and other documents submitted during the
14 process. So I mean, at least from staff's perspective,
15 the evidentiary record isn't the only thing that -- the
16 only portion on which the final Commission decision is
17 based.

18 MS. WILLIAMS: I'm very confused then, because
19 you know, I have an exhibit here number 87 that's an
20 e-mail between Colonel Cleaves and Mayor Ledford. Is that
21 an exhibit, but the US EPA's comments on inadequacy of the
22 FDOC is not?

23 HEARING OFFICER CELLI: That's a choice -- in
24 other words, Exhibit 87 would be an exhibit that the
25 applicant chooses to put in. All of these exhibits are

1 marked for identification right now. They're not received
2 into evidence. What we're doing is pre-mark the evidence
3 so we know what's coming and the parties are on notice of
4 what the parties are using to substantiate any claims or
5 positions they have. So that's the whole purpose of a
6 prehearing conference statement for us to find out what
7 the parties are putting in so that the parties can respond
8 and we know what the evidence will be so that you can make
9 determinations as to how many -- whether you need to call
10 a witness, how many cross-examination, that sort of thing.
11 So that's a choice of the proponent of that exhibit, why
12 that exhibit -- I actually have no idea why they're
13 putting that exhibit in. But that's their choice. And
14 when they do, you will have an opportunity to object if
15 need be based on who knows what. And we will rule at that
16 time.

17 So basically what happens at the evidentiary
18 hearing is all the parties say this is our exhibits, this
19 is what we're putting in. If any of the parties say I
20 object to Exhibit 87, we hear it. What's your offer of
21 proof? Why we make a decision. We either admit it or
22 exclude it and we move on to the next exhibit. So that's
23 actually done at the evidentiary hearing.

24 Really, today, I just want to know what are we
25 dealing with what's on our plate. What are the exhibits

1 that we have before us. And that's why I'm looking at the
2 exhibits list. So everyone else's exhibits seem to be
3 what I have in the tentative exhibit list seems to be so
4 far an accurate reflection of everybody's exhibits pretty
5 much except the applicant's.

6 And in your case, Ms. Williams, I have 500, which
7 is your comments, 501 which is the green chemistry hazards
8 traits paper, and 502, which is a reporter's transcript
9 from the East Shore matter. So my question is is that the
10 sum total of the evidence that you seek to put in at the
11 time?

12 MS. WILLIAMS: No, because I guess you know,
13 consider me a novice at this. But I would have thought
14 that what was in the docket on the Energy Commission on
15 the project would have gone into as their evidence. I
16 guess what you're telling me is that's not the case.

17 HEARING OFFICER CELLI: May or may not. The
18 applicant has the burden of proof. So the applicant needs
19 to put on whatever evidence they need in order to meet all
20 of the -- make sure that they met their burden of proof,
21 that they've approved their case by a preponderance. So
22 if there is something omitted, they apparently didn't want
23 it in there, didn't think it was necessary, I don't know.

24 We have Jennifer Jennings who's our public
25 advisor at the podium. Go ahead, Ms. Jennings.

1 MS. JENNINGS: Thank you, Hearing Officer Celli.
2 This issue of exactly what is considered within the
3 evidentiary hearing is the matter of a great deal of
4 confusion. And since this document at issue, the U.S.
5 EPA's comment on the FDOC, is not something that's a
6 surprise to any of the parties here and is publicly
7 available and properly I would think could be accepted as
8 an addition at this hearing to Ms. Williams' exhibit list
9 if she wanted to have it considered. I don't see any
10 disadvantage that puts any of the parties. And I would
11 ask that you take that into account.

12 HEARING OFFICER CELLI: Thank you, Ms. Jennings.
13 Applicant, do you have any position on the
14 document in question?

15 MR. CARROLL: I don't, because I don't know
16 exactly what the document in question states and obviously
17 we don't have it here in front of us. So it's difficult
18 for me to respond. That's part of the reason that the
19 exhibits are supposed to be identified in advance of the
20 prehearing conference so that the parties can come
21 prepared.

22 HEARING OFFICER CELLI: Staff?

23 STAFF COUNSEL DE CARLO: Staff doesn't have any
24 objection to addressing the issue of the EPA comments on
25 the FDOC.

1 My main concern is that Ms. Williams is
2 presenting exhibits without a witness to actually sponsor
3 those exhibits. So I will have questions about the
4 visibility of admitting exhibits that aren't sponsored by
5 an expert witness.

6 HEARING OFFICER CELLI: But she can certainly put
7 in it as comment.

8 STAFF COUNSEL DE CARLO: Certainly. And she can
9 cross-examine staff on whether they read the comment, what
10 their opinions are on the comments, if those comments by
11 EPA have been considered and put into our Conditions of
12 Certification.

13 HEARING OFFICER CELLI: Ms. Williams, do you
14 understand what just transpired?

15 MS. WILLIAMS: Yes, but I have to say here is the
16 letter to U.S. EPA in response to U.S. EPA's comments on
17 the revised FDOC air quality. It doesn't say -- it's
18 Exhibit Number 57. A letter from who?

19 MR. CARROLL: If I may, this exhibit list and the
20 exhibits were provided to all the parties several weeks
21 ago. My suggestion would have been that they be reviewed
22 before the prehearing conference. And I may say at
23 considerable expense all of these exhibits were copied and
24 provided to all the parties weeks ago in advance of this
25 hearing.

1 And as I think about it, I do have a concern with
2 identifying new exhibits at the prehearing conference,
3 because I may go back to my office and review that
4 document and realize it was one in a series of
5 communication and there were three or four subsequent
6 communications that need to be entered into the record put
7 to put this particular communication into context. So it
8 presents great problems when parties show up at the
9 prehearing conference and start identifying new exhibits
10 that they think should be in the evidentiary record when
11 those exhibits have existed for a very long time with the
12 proposed exhibit lists have existed for a very long time.
13 It's not as if this document that was just created or
14 issued by EPA yesterday. That's a different story. If a
15 brand-new document comes into existence, there may be a
16 basis for identifying it late in the game. But this is a
17 document that is -- I don't know the exact date. But I
18 have to assume months, if not years old. And it presents
19 a real problem, because the applicant may then have four
20 additional exhibits that it wants to include in the
21 exhibit list.

22 HEARING OFFICER CELLI: Ms. Williams, you
23 understand -- oh, Ms. Belenky, go ahead.

24 MS. BELENKY: Yeah, I would just like to say a
25 couple words about this.

1 First of all, the EPA comments were available on
2 the website. And they have been for quite a long time.
3 So I don't think there is any question or surprise here.
4 The question of whether these documents are properly
5 accepted as "exhibits" for the evidentiary record is a
6 fairly narrow question and they have actually
7 unfortunately gone around with the Commission on this
8 several times in other matters. The fact is these were
9 submitted. If they are in the public record, they are in
10 the larger record. They certainly can be relied on by any
11 of the parties in briefing.

12 The only question at this point is whether you're
13 going to accept them into the evidentiary record. And as
14 I understand it, the Commission has had a position that
15 they treat things in the evidentiary record differently
16 than they treat other documents. But as to whether this
17 is substantial evidence compared to other documents that
18 have been offered as evidence in the evidentiary record, I
19 think they're very interesting questions of law that we're
20 not going to deal with today. I have to say if the EPA's
21 comments are somehow off limits, that would be more than
22 absurd in this case. So I do think that there is no
23 question of surprise here and there should be no question
24 that they can be raised to cross-examine the witnesses.

25 HEARING OFFICER CELLI: We could even take

1 judicial notice if the Committee wanted to. The concern
2 we have really has to do with the procedural problems
3 arising from parties giving us a late filing. We've
4 got -- we received no prehearing conference statement from
5 Ms. Williams, apart from that which was filed by CBD. And
6 this is the first we hear of this document. And before I
7 move on, Ms. Williams, is there any other document besides
8 this document the EPA letter that you are seeking to put
9 in now?

10 MS. WILLIAMS: No. I'm sorry. I won't even seek
11 to put it in now. I'm just very confused. If this is a
12 CEQA equivalent process, how something can be in the
13 docket, how you can go on-line and read this stuff that
14 the staff is using to create a decision, but then it's not
15 submitted as evidence at a evidentiary hearing I'm --

16 HEARING OFFICER CELLI: But that's why we give
17 you the exhibit list, so you can look at the exhibit list
18 and go, wow, here's something I think should be in the
19 record. And then you put that in your prehearing
20 conference statement.

21 MS. WILLIAMS: I appreciate the fact that I got
22 the exhibit list from you a couple days ago and I actually
23 reviewed it and printed it out myself and looked at it.
24 And so now hearing what I'm hearing, I'm saying, it looks
25 to me like an exhibit is missing. I'm told it's too late

1 to bring it up. It's just the rules of the game that I
2 don't know.

3 HEARING OFFICER CELLI: Well, I'll tell you this.
4 What we need to do as a Committee is at some point we say,
5 okay, folks. The vault is closing. The evidence that
6 you're putting in is what we're receiving or we'll deal
7 with at the evidentiary hearing and no more. Because
8 otherwise, this thing could be a never ending cascade of
9 paper which we just at some point have to say no.

10 We're going to go off the record for a moment.

11 (Off record.)

12 HEARING OFFICER CELLI: Ms. Williams and parties,
13 what the Committee has decided is that the --
14 Ms. Williams, we would allow you to add as Exhibit 503 --
15 what is the identification of that document?

16 STAFF COUNSEL DE CARLO: Actually, I have copies
17 available if the Commission --

18 HEARING OFFICER CELLI: What would you call it?
19 Is it a letter dated --

20 MS. WILLIAMS: September 26th.

21 MS. BELENKY: Well, there were two letters.

22 STAFF COUNSEL DE CARLO: There were two letters.
23 One letter dated October 26th, 2010, from U.S. EPA to
24 Elton Heaston, Antelope Valley AQMD regarding EPA comments
25 on the FDOC from Palmdale.

1 MS. BELENKY: And there is a July 27th, 2009,
2 letter on the FDOC as well. But I don't know if that one
3 is the one that's being --

4 HEARING OFFICER CELLI: So you have that?

5 STAFF COUNSEL DE CARLO: I do not. I have a
6 response, a subsequent response from the AQMD to EPA dated
7 December 15th, 2010.

8 HEARING OFFICER CELLI: Is that response what you
9 refer to Ms. Williams as exhibit number -- was it 85 I
10 think?

11 MS. WILLIAMS: Yeah. I think this is in.

12 HEARING OFFICER CELLI: Okay. So the only
13 record --

14 MS. WILLIAMS: Just give me a second.

15 HEARING OFFICER CELLI: Okay.

16 MS. WILLIAMS: And --

17 HEARING OFFICER CELLI: We're going to allow the
18 parties to challenge at the exhibit at the evidentiary
19 hearing.

20 MR. CARROLL: And while Ms. Williams is looking
21 for that, I just wanted to clarify something she indicated
22 a moment ago that she had received -- she indicated a
23 moment ago that she had received the exhibit list a couple
24 of days ago and was now being told it was too late to add
25 to it. For record, applicant's exhibits were provided to

1 all the parties, including Ms. Williams in hard copy
2 format on January 11th, over a month ago.

3 HEARING OFFICER CELLI: I want to be clear that
4 the Committee does not find any fault at all with the
5 applicant and is grateful for the applicant's very
6 organized preparation of exhibits that we received. And
7 really is a shining example of how exhibits should look
8 like when you come to the California Energy Commission.
9 So we are grateful for that.

10 MR. CARROLL: Thank you.

11 HEARING OFFICER CELLI: What this decision I
12 predicated upon is really a policy that the Energy
13 Commission wants to support public participation. And we
14 have a non-represented party in pro per as it were. So we
15 would in the interest of the knowledge that it is a bit of
16 an overwhelming process for a first timer or someone who's
17 not that schooled in procedures at the Energy Commission,
18 that circumstances like this we might give a little slack.

19 MR. CARROLL: We understand and appreciate it,
20 although we think you're underestimating the expertise of
21 Ms. Williams and Ms. Belenky.

22 HEARING OFFICER CELLI: I don't underestimate Ms.
23 Belenky. This is my first experience with Ms. Williams,
24 but I do not underestimate Lisa Belenky.

25 MS. WILLIAMS: And I appreciate the applicant

1 (inaudible)

2 HEARING OFFICER CELLI: So I'm going to note and
3 mark for identification that the letter dated October 26th
4 is Exhibit 503. And then staff also handed me a letter
5 dated December 15th from Jerardo Rios, Chief Permits
6 Office in San Francisco. The letterhead is Antelope
7 Valley Air Quality Management District dated December
8 15th, 2010.

9 My question is is this document already marked
10 for identification? Was this exhibit 85 or is this an
11 additional exhibit that you would want to move in,
12 Ms. Williams?

13 MS. WILLIAMS: Just give me -- Exhibit 85. Good
14 question.

15 HEARING OFFICER CELLI: I'm going to go ahead and
16 mark it --

17 MS. WILLIAMS: This is Exhibit 86. But there's
18 this letter from U.S. EPA and also another letter. Lisa,
19 you're in front of the docket. It was dated in July I
20 believe, right?

21 And I appreciate the deference of the Committee
22 and the applicant, but I believe the Commissioners deserve
23 to have a record in front of them. And one of the key
24 issues in this case is the adequacy of the air pollution
25 mitigation. And these letters from U.S. EPA do speak

1 directly to the problems with the final determination of
2 compliance. So had I realized that they were not included
3 in the record, I thought they would have been.

4 But I understand I'm not an expert at the
5 procedures of the Energy Commission. So I greatly
6 appreciate the indulgence of the Committee and would be
7 great if we could add these two letters. Be happy to add
8 them together as one exhibit. And of course the applicant
9 can challenge that. Or we can add them as separate
10 letters. There's two letters. There's the July letter
11 and this letter that's October 26th.

12 HEARING OFFICER CELLI: I am going to mark for
13 identification Exhibit 504 as a July letter from who?

14 MS. WILLIAMS: U.S. EPA to the Antelope Valley
15 Air Pollution Control District on their comments on the
16 FDOC.

17 Lisa, do you see those in the docket?

18 MS. BELENKY: Yeah. They're both on the website
19 for the project.

20 HEARING OFFICER CELLI: So with that, then I have
21 the sum total of your exhibits as Exhibit 500 through 504,
22 Ms. Williams.

23 MS. WILLIAMS: Thank you so much.

24 HEARING OFFICER CELLI: Thank you.

25 MR. CARROLL: I'm sorry, Hearing Officer Celli.

1 Could you just repeat what Exhibits 503 and 504 are?

2 HEARING OFFICER CELLI: 503 is a letter dated
3 October 26th, 2010, from the U.S. EPA to the Antelope
4 Valley AQMD. 504 is a July letter from the U.S. EPA which
5 is comments on the FDOC. And I want to be clear,
6 Ms. Williams, that we're not receiving any evidence. This
7 is not a hearing. This is a conference today.

8 MS. WILLIAMS: I got you.

9 HEARING OFFICER CELLI: At the hearing, that's
10 when we receive the evidence. If this is your evidence,
11 you're going to have to bring it, lay a foundation and all
12 that.

13 MS. WILLIAMS: Thank you.

14 MR. CARROLL: On behalf of the applicant, I need
15 to reserve the right to identify the exhibits because
16 there may be responses from the Antelope Valley AQMD to
17 the EPA that are not currently identified.

18 HEARING OFFICER CELLI: And that is reasonable.

19 MS. WILLIAMS: Absolutely. I think that
20 there's -- I think when I looked in here, I think that
21 their responses are in here, but there could be a response
22 to this October letter.

23 HEARING OFFICER CELLI: And if that's the case,
24 we will entertain that motion at the hearing. So I want
25 to thank you all. You know, it's hard. These things

1 could come up last minute, but we're doing our best to
2 make sure that we have an organized record.

3 I want to describe that in the interest of time
4 and we're going to talk about time right now because we're
5 going to talk about the witness list. We don't have much
6 time. And I'm going to be putting out a new exhibit list,
7 a new tentative exhibit list that's got the correct
8 numbers for the applicant and send it to everyone by way
9 of e-mail. It's really important that you all take a
10 close look at these exhibit lists and make sure that
11 they're accurate.

12 The reason I'm saying this is because rather than
13 have the witnesses say, "I'm moving in Exhibit 5, Exhibit
14 5 is a letter from Bob Smith to John Doe dated 5/15 that
15 talks about blah, blah, blah." We're not doing that.
16 What we're going to say is is there a motion. And
17 applicant is going to say we're moving 1 through 145 into
18 the record. Any objection? That's the way we're going to
19 proceed. We're going to rely on the description of the
20 exhibits in the exhibits list. So that's why it's
21 important for the parties to take a close look at my
22 exhibit list when I send it out hopefully within the next
23 week.

24 We sent a witness list to all of the parties and
25 have copies here on hand, too, at the back table. We will

1 be at the Larry Chimbole Center in Palmdale on March 2nd,
2 2011. The evidentiary hearing starts at 10:00 and we're
3 going to go up until about 5 p.m. because we're going to
4 need to take public comment. And then I have to get the
5 Commissioners back on a jet to Sacramento.

6 After taking in the undisputed evidence and then
7 accounting for breaks and interruptions and any house
8 cleaning we may have, we're going to have about five hours
9 of productive hearing time that day. Five hours happens
10 consequently to be the total amount of time the applicant
11 estimated was needed to examine witnesses, just the
12 applicant alone, not including staff, not including CBD or
13 DCAP. Five hours is about one half of the time that we're
14 going to actually have.

15 So I have put together -- let me pass these out.
16 I created this handy little worksheet that I'm passing out
17 now to the parties. And what you will see is my proposal
18 that we start at 10:00 on time, introduction, motions and
19 procedures.

20 At 11:00, we would start on air quality. And
21 obviously some of these have gone away today, thankfully.
22 And we will use that time for more quality hopefully
23 better depth and more inquiry at the evidentiary hearing.
24 But I figure we'll take a lunch at 12:00 noon and go to
25 12:30. But that will be a working lunch to the extent

1 that we can. I've never been to the Larry Chimbole
2 Center. I don't know what's near it, but hopefully we can
3 make this work.

4 MS. WILLIAMS: What do you mean by a working
5 lunch? You're going to order lunch and have it brought in
6 and continue to go or whip out and grab lunch?

7 HEARING OFFICER CELLI: That was really the only
8 way I was going to make that schedule work would be to
9 have that kind of people bring their own sandwiches or
10 whatever.

11 MS. WILLIAMS: There is a great sandwich shop
12 around the corner called Katzen Jammers. You just call
13 them up and order stuff from them and have them bring it
14 in if you want it. Right there in walking distance.

15 HEARING OFFICER CELLI: I'm glad to say that
16 Katzen and Jammers made the record today.

17 But that was what I had in mind, was that we're
18 going to be -- I am sorry. I don't mean to eat in
19 people's face, but we need to move along.

20 So my vision was that we were going to take air
21 quality, which is the really bulk of everything we have to
22 deal with up until about 1:00, and then hit biology.
23 Hazardous materials I believe was off the table and
24 traffic and transportation. But there's soil and water
25 and alternatives. And there's in new things I have to put

1 in here. So I have to add land use. So wasn't biology is
2 an issue of CBD and DCAP, but hazardous materials was not.
3 What I'm thinking of doing is putting land instead of at
4 2:00, instead of hazardous materials, I'd say land use.

5 Alternatives we talked about was that needs
6 information. Have that last.

7 Soils and water -- we talk about traffic and
8 transportation. You said was completely hand by -- so
9 traffic and transportation would go off --

10 STAFF COUNSEL DE CARLO: Although it was my
11 understanding based on comments from I believe Jane that
12 there was some concern about the increased traffic from
13 road paving. So if that's the case, then staff would
14 like --

15 HEARING OFFICER CELLI: So I'm going to leave
16 that in. But I think we need a lot less time than we did
17 before. And hopefully during that traffic and
18 transportation time we can also deal with -- what were the
19 other --

20 STAFF COUNSEL DE CARLO: Cultural resources was
21 an additional.

22 HEARING OFFICER CELLI: Cultural. And also we
23 had public health, but public health I kind of got the
24 sense was really still sort of part and parcel of air
25 quality. What I think we'll do is handle it by way of a

1 panel. If you can have your public health person on the
2 air quality panel, then we really can kill two birds with
3 one stone there. And I'd like to go with as many panels
4 as we can just to speed things along.

5 What I'm talking about, Ms. Williams, instead of
6 calling one witness like divorce court where you have
7 somebody sit up there, we actually call all the witnesses
8 to the table. You'll ask a question and the appropriate
9 witness will respond. And maybe there will be some follow
10 up from some other witness. We've done this before and it
11 really does save time. It's a good way to go.

12 So what I'm proposing we do, it's about five
13 until 12:00. What I'd like to do is take a break until
14 five minutes after 12:00, have the parties confer, and
15 come back to the Committee with a schedule that works so
16 that we hit all the points and we do it and we are able to
17 get to public comment at 5:00 and get the Committee out of
18 here -- out of Palmdale by -- really, we need to be out of
19 there by 6:30 in order to make it.

20 How far is Palmdale from Burbank airport? It's
21 an hour.

22 So really we're aiming to be complete with public
23 comment -- Ms. Jennings, how much public interest have you
24 received so far? Do you have an estimate how many people
25 are going to be at the hearing on the second of March?

1 MS. JENNINGS: I don't have a current estimate.
2 We're going to be doing some outreach and I think
3 Ms. Williams has probably a better understanding of local
4 interest. We've had a number of calls from people who
5 couldn't be intervenors which would likely show up for a
6 hearing though.

7 HEARING OFFICER CELLI: Ms. Williams, what do you
8 think?

9 MS. WILLIAMS: Well, the topic is tremendously
10 controversial in the Antelope Valley.

11 HEARING OFFICER CELLI: Do you have some sense if
12 are we looking at 20 people? 100 people? Ten people?

13 MS. WILLIAMS: I don't think an hour would
14 probably be enough. Are you going to limit people to like
15 a minute?

16 HEARING OFFICER CELLI: It always seems to depend
17 on how many people show up. So if I have three people who
18 show up, we let them go. If 20 people show up, then
19 they're pretty much limited to five minutes kind of thing.

20 MS. WILLIAMS: You could -- I have to let you
21 handle your own hearing. There is a great deal of
22 interest in this project by a number of different -- city
23 mayors who are not happy with each other over it and a lot
24 of the public health impacts are huge, and there is a lot
25 of controversy about it. So I would expect that the

1 public would love to be able to voice their concerns to
2 the Commissioners.

3 HEARING OFFICER CELLI: As you confer now --
4 we're going to go off the record. If you would build that
5 into your estimates, we would greatly appreciate it and
6 let's take ten minutes and do this now.

7 MR. CARROLL: If I may, just I think we should
8 confer on that. But just to provide some context, we've
9 had many, many workshops and hearings in the Palmdale area
10 on this project. I think most we've had in the way of
11 concerned citizens is three or four. And of course none
12 of us can predict what's going to happen at the
13 evidentiary hearing. But it's not as though we've had
14 hundreds of people showing up at previous workshops. So I
15 don't think we should be alarmed about that. And of
16 course we will have as we have at all the other workshops
17 a number of project supporters that will be there as well.
18 So we'll have to make accommodation for them.

19 HEARING OFFICER CELLI: Well, it's not
20 unreasonable to have an hour. That's kind of the normal,
21 unless we're inundated with people. And then we have to
22 adjust.

23 So with that, let's go off the record and take a
24 ten-minute break. The parties can work.

25 (Off record.)

1 HEARING OFFICER CELLI: We're back on the record
2 again. It's just a little past five after 12:00. And the
3 parties have indicated that they had a productive work-out
4 session there, so who wants to take the lead on this?

5 STAFF COUNSEL DE CARLO: I can and the others can
6 chime in if I incorrectly stated something. We were
7 thinking of starting off with the air quality public
8 health panel.

9 HEARING OFFICER CELLI: At what time?

10 STAFF COUNSEL DE CARLO: Well, I don't know that
11 we need an hour for introductions, motions, procedures. I
12 don't know what you're anticipating there.

13 HEARING OFFICER CELLI: That really was my
14 buffer. You know sometimes we go off the record. And so
15 I was going to use that hour to sort of absorb all of the
16 non-productive things we do that aren't necessarily
17 non-productive but not taking evidence. So introductions,
18 and that sort of thing. Let's just assume that hour is
19 taken up on intros and motions and procedures, et cetera.

20 STAFF COUNSEL DE CARLO: Start at 11:00.

21 HEARING OFFICER CELLI: Air quality at 11:00.
22 When we're talking about air quality now, because of the
23 road paving issues that the intervenors have, are we going
24 to be taking up the road paving issues in this section of
25 air quality at this starting at 11:00?

1 MR. CARROLL: No. I think Ms. DeCarla will get
2 to that. What we were thinking was a panel on road paving
3 and to the extent there were issues unrelated to road
4 paving and other issues that we would take those issues up
5 separately.

6 HEARING OFFICER CELLI: So at 11:00, I have an
7 air quality panel.

8 MR. CARROLL: Well, Ms. Belenky wanted -- we
9 initially talked about doing the road paving panel first.
10 Ms. Belenky stated her preference to have the air quality
11 come first, because she wants to raise questions about
12 whether road paving is an appropriate mitigation in the
13 first place. So I think what we had sort of tentatively
14 arrived on was starting with air quality, public health,
15 and handling non-road paving issues. And by that I
16 mean --

17 STAFF COUNSEL DE CARLO: Although I would think
18 just from staff's point of view that we might as well just
19 address the road paving aspect to air quality that Ms.
20 Belenky has brought up.

21 HEARING OFFICER CELLI: So we'll go through the
22 whole umbrella of air quality and public health and the
23 road paving for air quality as a kick off topic. And how
24 late do we go on that?

25 STAFF COUNSEL DE CARLO: Staff would probably

1 need 15 minutes of direct.

2 HEARING OFFICER CELLI: And we get through air
3 quality by 12:30? 1:00? What do you envision?

4 STAFF COUNSEL DE CARLO: It's all up to the
5 intervenors. I don't know how much time they want to
6 spend cross-examining staff or the applicant.

7 HEARING OFFICER CELLI: Ms. Belenky, are you on
8 the line still?

9 MS. BELENKY: Yes, but I don't think it's all up
10 to the intervenors. The applicant has said they wanted to
11 cross-examine our witness for an hour.

12 HEARING OFFICER CELLI: That's not going to
13 happen. Just to be clear with everybody.

14 MS. BELENKY: I think first of all, my witness
15 can only be there by phone. I think it would be fine to
16 do it as a panel and, you know, just do it in a subject
17 matter way and we can cross-examine as it goes forward. I
18 don't see that we're going to have that much more than
19 half an hour of questions. And I'm not even sure we'll
20 have quite that many. And I want to be completely, you
21 know, up front about this. There is a disagreement here
22 in that it has been laid out in the papers. And I think
23 we just need to get people on record to show the Committee
24 what the disagreement is.

25 HEARING OFFICER CELLI: I agree. And I think

1 what you're saying makes total sense. We understand what
2 the record is.

3 My thought was that air quality was the
4 biggest -- the high of the priority really, the largest
5 chunk of time that we needed to spend on anything. And if
6 you will concur with that, I just want to a lot it the
7 time it deserves. That's taking into consideration I'm
8 going to ask all of you to cut back or be economize on
9 your questions and your cross-examination and direct and
10 really I expect the parties -- I guess I was going to talk
11 about this later, but I'll just launch into it now.

12 Regarding direct examination, we received already
13 everybody's testimony. There is no need for I don't need
14 you to call Dr. Greenberg up here so he can rehash what we
15 already have on paper. We're going to presumably get that
16 evidence anyway. We're going to get his resume. So we
17 don't need to hear that. If he's only being made
18 available for cross-examination, then what we would do is
19 call him up, have him be sworn. Staff would probably say
20 this is Dr. Greenberg, his testimony related to public
21 health and whatever else. And then we would probably turn
22 it over to the other parties for cross-examination if
23 there was no further direct. Because there's no need for
24 that. The rest of really what I considered to be
25 surrebuttal, because you've already had an opportunity for

1 the other parties to rebut the direct testimony. So
2 really, we only need to hear the new evidence.

3 So I hope that's clear to you, Ms. Williams. I'm
4 getting nods from everybody.

5 I'm doing this in the interest of time so that
6 you get the most out of the evidentiary hearing. So when
7 you do object, if parties have an objection, I want there
8 to be -- if you object by saying objection, hearsay,
9 objection, whatever, and then let the Committee rule or
10 inquire further, I don't want to have a lot of speaking
11 objections. I object, he can't do that because blah,
12 blah, blah, blah, blah. That's a speaking objection. I
13 just want to know what the objection is. And you'll rely
14 on Ms. Belenky for that, I'm sure, because she's good at
15 that. She knows what we're talking about.

16 Regarding cross-examination, I want to be really
17 clear with the parties. There is no time for thinking on
18 the fly. If you cannot come up with good
19 cross-examination in the quiet of your work space, you're
20 not going to come up with good cross-examination while I'm
21 sitting here telling you, come on. Let's go. Let's go.
22 Let's go. Because I'd be jamming everybody's radar. So
23 you need to come in with your cross-examination --
24 prepared with your cross-examination. Know how much
25 cross-examination, you have, how many questions. In the

1 case if we go too long, we'll ask how many more questions
2 do you have. And you need to be able to tell the
3 Committee, "I have three more questions." And we'll say
4 you get two or something like that. But I'm just saying,
5 we need to manage the time closely. So you need to be
6 aware of that.

7 Want to avoid floundering, fishing. The one
8 thing that drives me crazy is when someone says, "Can I
9 have a moment" and they go flipping through their papers
10 while they're thinking of something to say or looking for
11 something. When you do your cross-examination, if you're
12 going to cross a particular witness on something he said
13 in a particular document, you need to say, "Mr. Witness,
14 on date time and place or directing your attention to
15 Exhibit 300, at line 3, you say, blah, blah, blah," and
16 then ask your questions. I don't want people digging for
17 the document. You need to already know where that
18 information is that you're cross-examining on.

19 And lastly I want to make sure that everybody
20 remembers to allow the witnesses to actually answer their
21 questions. So you can't cut them off and go "But wait a
22 minute." Let them finish what they have to say and then
23 you can follow up.

24 So with that, I'm hoping that we can cut this way
25 back by avoiding the need to do a big direct on everybody

1 since we already have everybody's direct testimony and we
2 already have everybody's rebuttal testimony. So for
3 instance, Ms. Williams, Mr. Tholan, I'm not sure what, but
4 we presumably his evidence will be in. We don't need to
5 hear him state live once again whatever it is he said in
6 the document. That's what I'm trying to prevent.

7 So with that, we're at 11:00 for air quality and
8 public health. You think we can take that up to -- how
9 far can we go before we actually have to get into the road
10 paving? How much time is that going to require? Can we
11 finish all of the air quality and public health by --
12 without the road paving aspect by 12:30? That's an hour
13 and a half. I'm hoping.

14 STAFF COUNSEL DE CARLO: I think we were
15 considering allowing the road paving discussion for air
16 quality to take place during the air quality.

17 HEARING OFFICER CELLI: Okay.

18 STAFF COUNSEL DE CARLO: Unless the other parties
19 prefer otherwise. I just think it's difficult to cut off
20 a witness in their own testimony. I think if we're going
21 to have air quality up there, we might as well have all
22 questions with regard the air quality all at once.

23 HEARING OFFICER CELLI: Makes sense. Two hours?
24 Do you think in two hours we can knock out air quality in
25 its entirety, including the road paving?

1 MS. BELENKY: I think so.

2 HEARING OFFICER CELLI: With --

3 MR. CARROLL: Just for clarification, I'm not
4 sure at this point we have any air quality issues that are
5 unrelated to road paving. They either are whether road
6 paving is appropriate mitigation in the first place or
7 whether the impacts associated with the road paving have
8 been fully analyzed. I think that's all that's left on
9 the air quality list.

10 HEARING OFFICER CELLI: That's good. I mean, I
11 see that we might be padding it a little bit here. But if
12 I give everyone until 1:00 for air quality, then at 1:00
13 then what was -- Ms. DeCarlo, what was the next topic?

14 STAFF COUNSEL DE CARLO: Then we would have a
15 panel on road paving that would include biology, land use
16 for the growth inducing impact discussion, traffic and
17 transportation, soils and water, and cultural resources.

18 HEARING OFFICER CELLI: Bio, land, soil and
19 water --

20 STAFF COUNSEL DE CARLO: Traffic, and cultural.

21 HEARING OFFICER CELLI: Does that pretty much
22 nail them all? I think it does.

23 STAFF COUNSEL DE CARLO: And then that just
24 leaves alternatives. We thought that would be a good
25 stand-alone section to have at the end.

1 HEARING OFFICER CELLI: So the road paving
2 section which starts at 1:00 would go until what? 3:00?

3 STAFF COUNSEL DE CARLO: That would probably be a
4 sufficient amount of time, at least from staff's
5 perspective.

6 HEARING OFFICER CELLI: Does this all seem
7 reasonable to you, Ms. Williams?

8 MS. WILLIAMS: Yeah, except we don't have the
9 socioeconomic resources in there.

10 STAFF COUNSEL DE CARLO: We were going to put
11 growth inducing impacts under land use.

12 HEARING OFFICER CELLI: Right. That socio -- the
13 reason I put in socio was because I thought that's what
14 she was talking about with regard to growth and what Lisa
15 Belenky was talking about with regard to growth inducing
16 impacts. So --

17 MS. BELENKY: I think we can kind of categorize
18 it pretty easily. The question is if you allow them to
19 pave all these roads, have you done all of the analysis
20 necessary for making that decision.

21 HEARING OFFICER CELLI: So I'm going to add
22 socio, because I have a feeling what's going to happen is
23 the experts are going to talk about the road paving
24 implications. The questions are going to come to them
25 from the parties, and I guess later on we have to sort out

1 what section in the PMPD it goes to, because like socio --

2 STAFF COUNSEL DE CARLO: But our socio person
3 didn't do the growth inducing impact analysis.

4 HEARING OFFICER CELLI: Okay. But again, this
5 was all limited just to the road paving. So that person
6 who can speak to the growth inducing impacts of the
7 paving --

8 MS. WILLIAMS: It's not just the road paving.
9 It's all the air, right?

10 HEARING OFFICER CELLI: No. Now we're not
11 talking about the air quality part. We're talking about
12 road paving, but everything except air quality, if I
13 understood --

14 STAFF COUNSEL DE CARLO: And public health.

15 HEARING OFFICER CELLI: And public health. So in
16 other words, Ms. Williams, the air quality and public
17 health section including the road paving will happen
18 between 11:00 and 1:00. Do you see?

19 MS. WILLIAMS: Right. I understand that. So
20 your socioeconomic guy didn't do the road paving, right?

21 STAFF COUNSEL DE CARLO: He did not do the growth
22 inducing impacts analysis. Basically, we will have a
23 witness available to talk about the potential for road
24 paving to create additional growth. And that witness we
25 have determined would best be the witness who wrote the

1 land use analysis, because the issue of whether roads --
2 the paving have roads in and of themselves generate growth
3 we believe is a land use issue.

4 HEARING OFFICER CELLI: Okay.

5 MR. CARROLL: Why don't we just call it instead
6 of trying to fit it into socio or land use, why don't we
7 just call it growth inducing impacts associated with road
8 paving.

9 HEARING OFFICER CELLI: So bio, land, soil and
10 water, traffic, cultural, socio and growth inducing
11 impacts of road paving.

12 MR. CARROLL: We don't need socio.

13 STAFF COUNSEL DE CARLO: I just want to make sure
14 there's no intention for staff to bring their socio
15 witness down there.

16 HEARING OFFICER CELLI: Socio is stricken from my
17 list then.

18 MS. WILLIAMS: Well, actually your socioeconomic,
19 isn't there in your air analysis -- in your air mitigation
20 analysis, there is not a socioeconomic impact for the air
21 quality; right?

22 STAFF COUNSEL DE CARLO: I don't quite know what
23 the question is. Socio is a different field that we
24 analyze than air quality.

25 HEARING OFFICER CELLI: Socioeconomics typically

1 is how many workers are coming in, how much tax revenue is
2 this going to generate. These are economic issues. The
3 economics. How will this affect housing in the area. Is
4 an influx of workers going to overwhelm the hotels and
5 areas modes of housing that are available in the area,
6 that kind of thing. That's socioeconomics.

7 MS. WILLIAMS: Well, I understand that. But also
8 your environmental justice analysis. That's what I'm
9 trying to figure out, which silo is where. Which silo are
10 you putting things in?

11 HEARING OFFICER CELLI: Typically socioeconomics
12 is covered or mentioned in socio -- I'm sorry -- EJ.

13 STAFF COUNSEL DE CARLO: Yeah, socio rounds up
14 kind of the identify if they're a minority populations or
15 low income populations but the actual fundamental analysis
16 about whether the project impacts an EJ populations or
17 whether it's fully mitigated occurs in each technical area
18 which may effect environmental justice.

19 HEARING OFFICER CELLI: So that's how that works.

20 MS. WILLIAMS: So I don't know with your
21 witness -- are you going to have that witness available
22 for the air quality impacts there?

23 STAFF COUNSEL DE CARLO: Air quality witness will
24 be available to answer any questions about his air quality
25 analysis.

1 MS. WILLIAMS: And will the socioeconomic person
2 be available as well?

3 STAFF COUNSEL DE CARLO: No. Not at this point.
4 Our socioeconomic person if you're concerned about EJ all
5 they would testify to would be, yes, there is a minority
6 population, it's this percentage or no, there's not. They
7 wouldn't talk about the conclusions on whether this
8 project as a whole impacts an EJ communities because
9 that's done in a technical by technical basis.

10 HEARING OFFICER CELLI: Does the FSA come to the
11 conclusion this is an EJ community?

12 STAFF COUNSEL DE CARLO: I'm being told yes.

13 HEARING OFFICER CELLI: Okay. So I mean, so
14 that's not a question that we need to deal with, because
15 unless you want to argue that it's not, Ms. Williams, but
16 if they've already found it's an EJ community, then we
17 don't have to cover that ground unless there is a dispute.

18 MS. WILLIAMS: Exactly. I don't want to get to
19 the place where we are and ask a question and be told no,
20 no, that's not that guy's area of expertise. That's the
21 socioeconomic person and we didn't bring them because you
22 didn't specifically say this. And this is a problem,
23 because this is what happened in the last workshop.

24 HEARING OFFICER CELLI: I got you.

25 MS. WILLIAMS: So we have the environmental

1 justice piece. It is an environmental justice community.
2 It is a huge environmental justice community. Every
3 school in the down wind area is an under-performing
4 school. And there is no other performing schools for
5 these kids to go to. It is a big environmental justice
6 issue. So I just don't want to get to this place and then
7 be told, no, that's the EJ person.

8 HEARING OFFICER CELLI: No. But that's good.
9 I'm glad you raised that because what you're talking about
10 down wind is air quality. Now, does the air quality
11 disproportionately effect an EJ community? Well, we don't
12 have to have whether there is an EJ community. That's a
13 given. Now the question is does this EJ community suffer
14 a disproportionate load from whatever the impacts are.
15 Well, now the impacts go to is it air quality? Is it
16 traffic? Is it bio? That's -- this is why it's easy for
17 us to slot. We don't really -- based on what we're
18 talking about now, we don't know the socioeconomics
19 person, the witness from staff, because it's an EJ
20 community.

21 MS. WILLIAMS: So we don't need them.

22 HEARING OFFICER CELLI: That's the trigger.

23 MS. WILLIAMS: But I just don't want to get to
24 the place where I'm asking questions and I'm told no, this
25 is not the right person to ask the questions of because we

1 didn't bring the socio guy. And that's not something I
2 can know, because staff has put these things in these
3 different silos, right. So I don't know what silos are
4 where.

5 STAFF COUNSEL DE CARLO: Well, the silos are in
6 the final staff assessment. That's --

7 HEARING OFFICER CELLI: If you look at the table
8 of contents --

9 MS. WILLIAMS: But your environmental justice
10 analysis is in each piece.

11 STAFF COUNSEL DE CARLO: Right.

12 MS. WILLIAMS: There's not one giant
13 environmental justice analysis. There is an environmental
14 justice piece to each piece.

15 STAFF COUNSEL DE CARLO: And those were all done
16 by the technical staff who wrote the individual sections.
17 They weren't pasted from another technical staff. So
18 Steve Radis is our air quality expert. He was the one who
19 analyzed air quality impacts as well as impacts from air
20 quality.

21 MS. WILLIAMS: On environmental justice?

22 STAFF COUNSEL DE CARLO: Exactly.

23 MS. WILLIAMS: Okay.

24 HEARING OFFICER CELLI: So you probably won't run
25 into that problem --

1 MS. WILLIAMS: Again.

2 HEARING OFFICER CELLI: Again, unless you start
3 raising concerns about how many houses are there to
4 support the workers -- which is genuinely a socioeconomics
5 call. Then -- but that's not -- nobody raised that at
6 their prehearing conference statements and I don't think
7 that's going to be an issue here.

8 MS. WILLIAMS: Right. I'm just trying to clarify
9 what's our joint definition of socioeconomic.

10 HEARING OFFICER CELLI: So with that, we have
11 road paving starting at 1:00 and it's almost like we're
12 kind of batting clean up on that issue there with all
13 intended topic areas having to do with the road paving
14 going from 1:00 to 3:00. At 3:00, we address
15 alternatives, yes? Is there anything else left that we
16 haven't hit? Okay.

17 With regard to the project description, we'll get
18 evidence. With regard to the -- we've received evidence
19 already in the form of rebuttal testimony about how
20 much -- what roads, where they're located, what their
21 length are that are going to be paved. That is all --
22 that's really not a party's problem. That's more a
23 Committee problem.

24 So if we've got them all, then we've got
25 alternatives. And I imagine there may be a little

1 expanding and contracting of certain topics. But
2 hopefully we can get alternatives done by 4:00. If we can
3 do alternatives in an hour, we might even be able to --
4 although I noticed public comment at 5:00 in the notice so
5 we'd have to hang around and entertain the public. If
6 there is a whole lot of public, Ms. Williams, that shows
7 up, maybe we can take some of that comment early if we're
8 able to and reduce the load that way. But I did notice it
9 for 5:00. So we have to start at 5:00 for the public
10 comment for others.

11 That is very reasonable. I want to thank you
12 all. This is -- I knew I could count on you to make this
13 happen, because I couldn't figure out how to do it.

14 With that, I will put out a hearing order. And
15 it will include this schedule that we just described.
16 Briefly, last subject we're going to talk about before we
17 take public comment is briefing schedule. It takes three
18 days to get a transcript. Mr. Petty is nodding -- of the
19 proceedings. So if the hearings go -- if we end the
20 hearings on March 2nd, transcript should be ready -- there
21 is a weekend by 3-8-11. So opening briefing would be
22 filed on 3-18. So I'm giving ten days from the date of
23 availability. And we'll actually send out a notice of
24 availabilities for the transcript. Rebuttals would then
25 be due seven days later, on 3-25-11.

1 Now, is there any need to discuss that? Does
2 anyone have a problem with that briefing schedule?
3 Applicant?

4 MR. CARROLL: No.

5 HEARING OFFICER CELLI: Staff?

6 STAFF COUNSEL DE CARLO: Sorry? What were the
7 dates again?

8 HEARING OFFICER CELLI: March 2nd is our hearing.
9 March 8th I'm saying is the date that the clock starts
10 ticking. So opening briefs would be filed on 3-18, which
11 is ten days after the transcripts come off. Rebuttals
12 would be due seven days later, on 3-25.

13 MS. BELENKY: Can I just ask one thing? And I do
14 appreciate the ten days for the opening. My experience
15 with the Commission has been that actually the office is
16 not really open on many Fridays. And so would it be
17 possible the push both of these to Monday due dates? I
18 don't think it would make much difference to the
19 Commission.

20 HEARING OFFICER CELLI: You know, I'll tell you
21 what the major issue is, Ms. Belenky, just so you're
22 aware. When it comes to writing the PMPD, the briefs are
23 all important. They're very important. And we need to
24 see what the parties's position are and the place we look
25 is the briefs. So I'm always eager to get the briefs as

1 soon as we can without cutting off the parties' right to
2 actually turn in a quality brief.

3 I'm looking at the month of March. We're going
4 to end on Wednesday, the 2nd. Three days -- it takes
5 three days to get a transcript. The transcript -- the
6 following Monday is really the 7th. So if the transcript
7 comes off on the 7th, is mailed to the parties on the 7th,
8 is available on the internet, then really I'm giving
9 eleven days there. I know that oftentimes parties
10 aren't -- the furloughs have gone away for most of the
11 Energy Commission any way, I believe. Is that not true?
12 Only the attorneys. But the point is if they're filed,
13 someone is here to receive the briefs and I just want to
14 have them in our possession. I mean, I'm not going to
15 start reading it until Monday. But if I have to wait
16 until Monday afternoon, that just cost me a day.

17 So that's why I'm -- that's why I'm thinking of
18 keeping it the way I have it, Ms. Belenky, to actually
19 have it come in on that Friday so we can start working on
20 it on the 21st. And then the 25th is the following
21 Friday.

22 Are you there, Ms. Belenky?

23 MS. BELENKY: Yes. I understand. That's fine.
24 I tried to get all the people at the Commission many times
25 on Friday and nobody is around. So the idea that we have

1 to brief file a brief on 3:00 or 4:00 in the afternoon on
2 Friday when nobody is going to look at it until Monday.

3 HEARING OFFICER CELLI: You and I both, we've all
4 run into the problem of furloughs when the furloughs were
5 happening. Now we've got this weird situation where some
6 people are furloughed and some aren't, depending on what
7 union they're in. So what I think we'll do is basically
8 say that you need to at least at the very least file your
9 electronic copy on that day.

10 MS. BELENKY: Can it be by 5:00 at least then not
11 3:00?

12 HEARING OFFICER CELLI: Sure. We'll give you two
13 more hours to dot your I's and cross your T's.

14 MS. BELENKY: 3:00 would be a little awkward.

15 STAFF COUNSEL DE CARLO: Just a question. Is it
16 the Committee's intention not to clarify what issues they
17 would like to see briefed?

18 HEARING OFFICER CELLI: We'll probably have that
19 discussion at the end just before we take public comment,
20 because we're going to know at that point what the issues
21 are and you can already see the writing on the wall and
22 the parties, especially intervenors know, you know today
23 what your issues are. So we can frame them in your own
24 mind and start working on your opening briefs today,
25 because you are already armed with what you know will be

1 the issues.

2 STAFF COUNSEL DE CARLO: But I think
3 fundamentally it's what the Committee has questions on.
4 It really doesn't help us to spend time briefing an issue
5 if the Committee has already made up its minds it doesn't
6 have any questions on the legal issues involved. So it
7 definitely helps us to narrow the issues on what the
8 Committee does still have questions and would like further
9 impact on.

10 HEARING OFFICER CELLI: I understand that. It's
11 a chicken and the egg situation, because oftentimes I
12 don't know what the issue is until it's opening. I read
13 the opening and then I hope somebody better rebut this,
14 because if not, then I have to deal with it. So that's --
15 we'll do our best to frame the issues for you, but also
16 the parties are kind of free to add in in their opening
17 briefs any issues that the Committee hasn't framed for
18 you. So we would let that happen.

19 I'm going to go around the table now and ask that
20 concludes really the particular list of things we needed
21 to cover today in the prehearing conference. But I want
22 to hear if there's anything further from applicant.

23 MR. CARROLL: No, we have nothing further. I
24 would just restate again that we do appreciate
25 Commissioner Douglas and Commissioner Boyd jumping into

1 the middle of this as well as your staff. I know it's a
2 lot of paperwork to get up to speed on and we're very
3 pleased to have a new committee so we can move forward and
4 conclude this process. Thank you very much.

5 HEARING OFFICER CELLI: Thank you.

6 Staff, any concluding remarks?

7 STAFF COUNSEL DE CARLO: Thank you for
8 entertaining our comments today. And we look forward to a
9 very productive and succinct evidentiary hearing on the
10 2nd.

11 HEARING OFFICER CELLI: Thank you.

12 And next I'm going to ask for Lisa Belenky, any
13 final questions? Comments? Et cetera?

14 MS. BELENKY: No. Thank you very much.

15 HEARING OFFICER CELLI: Thank you. We hope you
16 get well soon.

17 And Ms. Williams?

18 MS. WILLIAMS: I have no further issues or
19 statements. Just thank the Committee for being so
20 helpful.

21 HEARING OFFICER CELLI: Thank you. And thank you
22 all very much for working together so well to make the
23 schedule happen. With that, I'm going to turn the meeting
24 back to Commissioner Douglas.

25 COMMITTEE MEMBER DOUGLAS: Thank you,

1 Commissioner Celli. All my thanks to everybody for
2 working hard and getting through what we needed to
3 productively --

4 HEARING OFFICER CELLI: I'm sorry. Before we
5 adjourn, we have to take public comment.

6 COMMITTEE MEMBER DOUGLAS: Let me ask, is there
7 anyone in the room who would like to make public comment?
8 Is there anyone who is on the phone who -- we'll open up
9 on the phone lines. Is there anyone on the phone who
10 would like to make public comment?

11 MS. PARSON: Yeah, I'd like to make public
12 comment.

13 HEARING OFFICER CELLI: Please, go ahead. And
14 please identify yourself for the record.

15 MS. PARSON: Okay. My name is Ms. Parson. And
16 represent Recycled Development.

17 And I'd like to just make this public comment.
18 Yes, I apologize. There does seem to be -- I'm not in
19 objection to anything from the meeting. But I'd just like
20 to comment. And if I were to make objection, I would make
21 an objection on the fact that that if this were to become
22 a difficult project that the need for the evidence would
23 be important, because if the plant messed anything or if
24 they didn't address a hazard, and there would be -- there
25 would be no need to address that human -- the environment

1 and life and all those things that are under CEQA. And
2 the hazards of life and the environment and the resources.
3 So yeah if those are taken by different sections, that
4 would be important if this were to become a physical
5 project. Okay.

6 HEARING OFFICER CELLI: Thank you, Ms. Parsons.
7 Is it P-a-r-s-o-n?

8 MS. PARSON: Yes.

9 HEARING OFFICER CELLI: P-a-r-s-o-n-s?

10 MS. PARSON: No "s".

11 HEARING OFFICER CELLI: Thank you, Ms. Parson.

12 MS. PARSON: You're welcome.

13 HEARING OFFICER CELLI: Anyone else wish to make
14 a public comment who's on the telephone? Is there anyone
15 else on the telephone who'd like to make public comment at
16 this time? Now is the time. Please speak up.

17 Hearing none, now I can turn the meeting back to
18 Commissioner Douglas.

19 STAFF COUNSEL DE CARLO: Could I just make one
20 request before we wrapping everything up? Staff does want
21 to continue into a workshop right afterwards. So if we
22 can leave the phone lines up so we can wrap up some
23 conditions that we wanted to.

24 HEARING OFFICER CELLI: Yes. That's perfectly
25 okay. I was just about to cut off the phones. So I'm

1 going to leave the phone lines on. People who are on the
2 telephone wish to participate in any further conversations
3 that the parties are going to have after we adjourn,
4 please stay on the line and you can participate.

5 MS. BELENKY: I'm not going to be able to do
6 that. I'm going to get off now. Thank you so much.

7 HEARING OFFICER CELLI: Thank you.

8 COMMITTEE MEMBER DOUGLAS: All right. And with
9 that, thank all the parties for their hard work getting up
10 to this point and look forward to seeing you all in
11 Palmdale for the evidentiary hearings. The prehearing
12 conference is adjourned.

13 (Thereupon the hearing adjourned at 12:41 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 18th day of February, 2011.

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